

METROPOLITAN AREA PLANNING COMMISSION
MINUTES

January 13, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, January 13, 2000 at 12:45 p.m. in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; James Barfield (late arrival); Chris Carraher; Bud Hentzen; Bill Johnson; Ron Marnell (late arrival); Susan Osborne-Howes; George Platt; Ray Warren; and Deanna Wheeler. Richard Lopez; John W. McKay, Jr.; Jerry Michaelis; and Harold Warner were not present. Staff members present were: Marvin Krout, Secretary, Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner, Lisa Verts, Senior Planner, Barry Carroll, Associate Planner, and Karen Wolf, Recording Secretary.

1. Public hearing to consider adopting the Center City Neighborhood Development Plan.

GAROFALO "This is a public hearing to consider adopting the Center City Neighborhood Development Plan as an element of the Comprehensive Plan. Ray Ontiveros is here to present this."

RAY ONTIVEROS, Planning staff "Thank you so much for your attendance. It is important that the neighborhood plans receive attention and the care and review that they deserve. It is a growing wave of activity regarding communities across the Country, as well as the groups that have been behind these. In our case, we have a good combination of individuals and groups and there are a few members and pastors here from the Center City Organization Revitalization effort to discuss this.

To begin with, this is to take a neighborhood plan to adoption. This is really the first one, although we have had a couple of other neighborhood plans done a few years back, including the Northeast Neighborhood Plan and the Plainview Plan. These plans can be very useful, as they do carry a lot more weight with funding agencies once they are adopted. What we are hoping to do is to present a string of neighborhood plans, developed with the community, the local businesses, the local governments, and now, as I mentioned, a growing body of interfaith participants, congregations, etc. Adoption is needed so that these organizations can start working at the grass roots level and pick up funding, pick up support from foundations, charitable organizations, from the Federal Government, from State government perhaps, if they should have the funds. This is the first one, and I just have a very simple 'who,what,when,where' type of a presentation here, and then I will let some of the members who have been active say a few words if they are interested. Then we will turn it over to questions or if anyone from the audience wants to speak."

This is a Wichita project. It is done in concert with the Center City Organized Revitalization Effort (C.O.R.E.), a committee led by ten ministers right now, for the current way it is organized. That group, C.O.R.E., is looking at incorporation itself as a not-for-profit community development corporation. The plan was done with funding provided by the State. The State was able to help us last year, we did receive money last year or so, \$15,000, and that helped be the catalyst to get this plan done.

It was prepared by a firm called Development Concepts of Indianapolis, Indiana. They were here about two months ago and discussed it with the Planning Commission. They have also presented the initial findings before the County Commissioners and the City Council. Their contract is up on this plan. They are not here now; the C.O.R.E. group is taking over. That is the acronym for the group I mentioned. The plan is a guide, just like the Comprehensive Plan is a guide to development for the City and County. It is a guide to a much more narrowly defined neighborhood. In this case, it was the church groups (that will be talking more about this later) that really came up with the vision. So we just put some boundaries to it, the Development Concepts people really worked with this organization to make the plan become a reality in having the guide to the physical development of the area.

The consulting group, Development Concepts, really appreciated working here in Wichita. It was their first time in this area and they enjoyed working with the level of interest that folks had in doing some things like this, planning at the neighborhood level. They were appreciative of getting a chance to speak before the County, the City Council and you. So I will relate that to them later. They will still be forwarding us three more plans. This plan is for the area just immediately to the north of the downtown area, roughly Second Street on the south, Ninth Street on the north, although it doesn't cover the Via Christi campus, Main Street on the west down to the Santa Fe Railroad tracks on the east.

The plan boundaries, were to be a little bigger than the area they initially discussed because we tried to do as much planning with these consultants as we could. Obviously, if you have the opportunity, we try to get some more blocks covered. But, it probably was as much as they could handle for that contract amount. As I said, they enjoyed it, and produced a document that is an initial step here because there is a lot of implementation, that I will talk about later, that still needs to be done. It is not a plan for rezoning, it is not a plan for a precise site development plan, like a CUP. It doesn't identify every parcel and say what it is going to be used for. It does identify uses by block with a lot of flexibility in terms of being able to put commercial offices, medical offices and housing in certain areas, etc. So it is trying to become more detailed than the Comprehensive Plan, but yet maintain some flexibility to allow the neighborhood to breath. It is trying to have some room to bring in new ideas and fit those places without being so precise and dictating exactly what should be there.

Obviously, rezoning is an implementation tool that will be playing a part in this or other plans later. It may or may not require areas to be rezoned, but when we get to this stage, if this plan were to be adopted, the next stages are actually dealing with property owners about needed changes, about developments on vacant parcels, etc. A lot of negotiation, in the traditional development process, goes on before the developer has a vacant piece of land and is are able to come up with ideas and

concepts. In this case, we need that land assembly and we have to work with people to get that to become a reality. That is what one of the difficulties will be.

The 'when' part of this, (when these things happen), depends on when this plan is adopted. We will be able to take it to business groups, local lenders; to foundations; charitable organizations; corporations. These groups need two things. They would like to see a physical plan of what this group, this Neighborhood Association, or this church group, have in mind in case of future loans, future grants, and assistance, and also a business plan to make sure that that plan has a financial basis and backing that is reasonable. So this is the physical plan that you have here. The second thing is a business plan which will be more of their business. That doesn't have to be adopted, of course, by the Planning Commission.

Work began, as I mentioned, last Spring, in April of 1999 when the consulting firm was hired, and this is the last stage here. After this, we go to the City for adoption to complete the process. The dream really began for this project a couple of years ago when these churches first organized in 1997, maybe in late 1996, before I was involved with them. I have, in my notes, why and how this is going to come about, but I want to leave some room here for others to discuss. Basically, why we need the adoption is to meet the goals of revitalizing the older parts of the City. These neighborhood groups and church groups know that there needs to be something done to avoid the issues faced and the problems faced by the larger cities across the Country, and the depths to which we could sink in terms of blight.

We certainly have a great opportunity to get a handle on these conditions early and try to make some changes. We know that everything won't be 100% reversed and that these changes take time, but it is a good chance here to really get started and work with upcoming groups, including state and federal organizations that are aiming at revitalization. The plan relates to the Comprehensive Plan update that we have been talking about, the trends and the conservation option. This neighborhood plan helps to meet some of the conservation and redevelopment objectives that the Planning Commission is promoting.

The 'how' we will talk about later, probably as questions come up. Implementation it will really require a concerted effort, a dedicated focused effort by the group to keep on top of things with the local lending community; with interested developers and builders; with the federal government and their funding sources; with state government with local fund raising here in the community; and with the city and county and state governments as far as regulations and changes that would need to be made to revitalize this neighborhood or others. Some of that is already in the works with incentives being proposed and discussed by the City. Hopefully, the County will be on board, too, because the County has seen some of this work and is very supportive of what is happening.

So, at this point, this ends the presentation that I wanted to make. We had some slides of the earlier maps the consultants had, and I didn't want to show those because it would be confusing. Also, I do apologize, (and we have extra copies) if you did not receive a copy. I will get one in your hands. The copy is a little bit tinted here because of the paper that they used to make the copies. I have a couple of cleaner ones. The copies I wanted to use were not ready today. But these are just the same material. That is my discussion for now. Are there any questions?"

GAROFALO "Do we need to hear from anyone else now, Ray?"

ONTIVEROS "I don't know how many are here to speak, but it is open to the public."

GAROFALO "That's right, this is a public hearing. Is there anyone else who wants to speak on this?"

KELLY BENDER "I will be brief. I am the senior pastor of the First United Methodist Church here in downtown Wichita and chairperson of C.O.R.E. Our Council of directors is represented here today by Hannah McCann, who is the executive director of Habitat for Humanity and a member of our Council of Directors. Next to her is Rick Cline, who is the pastor of the Central Church of Christ and Rene Minshew, who is the pastor of the First Presbyterian Church. Those are three of the ten downtown congregations that have been participant and have been founding members of C.O.R.E. and who first began the conversations around the vision to foster community through residential projects in the Center City, projects that would seek to be inclusive, diverse, and cosmopolitan.

As a pastor whose ministries are based on volunteers, I appreciate the volunteer efforts that you give on behalf of our community. As a pastor, I also know how difficult it can be to get a quorum of volunteers, so I am grateful that you are here today. Just let me say that as downtown congregations, we know that in order for us to be vital, we must be attentive to our immediate neighborhood, and that is a particular challenge for us because as downtown congregations, the vast majority of our members come in from the suburbs. We also know that in order for our neighborhood to 'be all that it can be', more people need to live in it. And we also believe that a city is only as strong as its center; as its heart; its core. There is knowledge based on all kinds of data across the Country, that if a city doesn't stay vital, if it isn't revitalized at its heart, then it will fall far short of the city that its inhabitants and citizens would long for it to be.

So we urge your support that our C.O.R.E. project; that our development project be included in your Metropolitan Comprehensive Plan. I will stop there. If there are any questions, if I can't answer them, I am sure that Ray can. But thank you for your time and for your consideration today."

GAROFALO "Thank you, Reverend. We will hold up on questions until we have heard from everyone. Is there anyone else who would like to speak?"

RICK CLINE "I work at the Central Church of Christ downtown. You give a preacher an open microphone and that can be pretty dangerous. The next thing, we will be passing the hat, I suppose. I will just take a moment and reaffirm what Kelly has

said as the leader of a downtown church. About two years ago, we went through a process of determining whether to stay or move as most of the downtown churches have, in recent years. We had that kind of a discussion, and we believe it is important that there still be a vital presence of churches downtown. But at the same time, we also recognize that we have some responsibility to this downtown community if we are going to be good citizens and good members of that community. So we made that commitment and we stand behind that commitment and we are very interested in working with this project and our members being part of this project as it continues to develop. So we really do appreciate your consideration of it and really hope that you will pass this and give it an adoption so we can move on to the next stages. We have some very exciting discussions going on about what could be. Thank you very much for your time."

GAROFALO "Thank you. Is there anyone else who would like to speak?"

RENE MINSHEW "I am the pastor of the First Presbyterian Church. As was stated earlier, preachers never turn down a chance to speak. I spent 45 years of my life on the east coast, but all of my pastoring years have been in downtown congregations because I believe that the downtown area is the life's blood of any community. I don't lend my support to very many things because I could be very thin in my time commitments. Yet, when I was discussing issues with other pastors in this community about revitalizing the downtown area I thought that this was a project that I need to lend my support and my church's support to.

And yes, the First Presbyterian Church has gone through the discussion of should we stay or leave, and the vast majority of the people said 'no, we are going to stay, and we would like to have the community itself grow with us in the downtown area'. So I would appreciate your support of this project as well."

GAROFALO "Is there anyone else who would like to speak?"

HANNAH MC CANN "I am the Executive Director for Wichita Habitat for Humanity, and I guess I was instructed on my way up here to tell you of my connection to a church. My husband is a pastor in this community, so I get to have the microphone today instead of him.

As Habitat for Humanity, many of you know us as that organization that is Jimmy Carter's organization, or the organization that builds houses. But Habitat has a far higher call in that we are not only building houses, we build communities. Our work throughout the nation, as well as here in Wichita, our outcome would be that we would help to build community, even when we are building one house, we are hoping that by building that one house in that community, we will further the growth of the community and make that community better. That is where Wichita Habitat sees its role with C.O.R.E., to help as the process develops to bring community back to that area of the town, which is very important. We still have many families that call and are asking for our assistance. They want to live in that area, so we feel that it is a good investment of our time and resources to help with this project and revitalize that area. Thank you."

GAROFALO "Is there anyone else to speak? Okay. Seeing none, we will bring it back to the Commission for questions or comments."

PLATT "I would like to ask all of the speakers, or maybe they have just one answer and that would be fine, but if you could accomplish in terms of this plan, one thing in the next twelve months, what would you like to come back and report to us a year from now that has been accomplished?"

BENDER "I would like to be able to come back a year from now and report to you that we have the dollars in hand from a broad coalition of private and public funding, city and county support so that we are well under way and purchasing property options. That we have received enough dollars that we actually have a person who is acting on our behalf, that is staff hired by C.O.R.E. We are engaged in full-time ministries and jobs and we are volunteering as you do, but we are reaching the point where we are going to have to have someone giving undivided attention to this. And with the dollars beginning to roll in that would allow us to actually purchase properties, hopefully it would be a developer that would catch a sense of our vision for the center city. We are realists. We know what the opportunities and challenges are going to be, but we are also excited about a base of support that continues to grow and continues to be ever more broad."

WARREN "As you see, and I am sure you are realizing and acknowledging that the government is probably going to be have to be involved, the City and County, but as you thought about this, do you see that effort being focused, maybe, into a common area or a single area where you would start at that area and maybe have a land acquisition to an amount that then would be attractive to a developer as yet?"

BENDER "You will understand when I say that we have tried to be non-descript in terms of where the first phase might be because of implications around property values, but we have identified three different phases. The first phase we anticipate would total in the neighborhood of some \$12 million. Once we can put together the timing with the funds in hand to purchase the property options, we will begin to show our hand further in terms of where that first phase would be, but yes, we have identified that.

I would also want to say to you that another key player in this is Via Christi, the Regional Medical Center. And they recognize that it is not only an opportunity for them to make an impact in the community, but that it will benefit them as well because we are talking about their immediate neighborhood."

WARREN "So you speak of \$12 million or a figure that you are hoping for, then you are looking as the first priority that that would go towards land acquisition?"

BENDER "Land acquisition, purchase of property, the staffing that we need and then, I think, in terms of development."

ONTIVEROS "Development is the bulk of that \$12 million. The land acquisition is more like \$1.2 million. But the \$12 million is private and public dollars. It is for constructions costs, sidewalks, other improvements, etc."

WARREN "Are you in a position that if you got this block of land that it would not be attractive to a developer, therefore you would have to have public money to develop it? Is that what I am hearing, Ray?"

ONTIVEROS "There may be a need for public dollars in sidewalks or street improvements or closing of streets or landscaping. We do think that, depending on the level of incentives that are offered by the City, or by C.O.R.E., that for some developers that may be enough, just some land. Others may need a little bit more. It depends on who we get."

BENDER "We think, though, that it will require added incentives for it to happen, yes, given the neighborhood. Just like it takes added incentive for folks to hang in with our downtown congregations because they drive by two or three or four different churches of their own denomination, our denomination, to get to us. It is a challenge being in the center city. We know that, you know that, and developers are engaged elsewhere primarily right now. At least that is my perception. So, yeah, we are going to need help."

GAROFALO "Reverend, I have a question. The financing of this project or projects, in your discussions and your studies and the consultants, what is the break down on monies? Do you really look for any private money at all? I am thinking about land acquisition."

BENDER "We have both city and county represented at the table, in terms of our Council of Directors. As members of the Council of Directors, we have visited key personnel in each of lending institutions, banks, here in the community. The congregations will be stepping up. I am in conversation with my folk that we will actually purchase the property as a part of the C.O.R.E. project and move a pastor in there. Hannah has indicated that Habitat for Humanity is interested in what we are doing, so public and private, city and county, banks, wherever we can find it, but it will have to be broad based and creative."

GAROFALO "But do you envision most of it being public money?"

BENDER "When you talk about most of it, I think the response would be no. Ray?"

ONTIVEROS "On Page 52 of the Plan, there is a little table that talks about the leveraging of private and public dollars. For development, Frank, that would be more like \$1 public, \$4 private, but for land acquisition, that is under predevelopment costs and is more like \$2 public, \$3 private. That wasn't seen quite as 50-50, but there is still probably a lot of public effort to get the ball rolling. That is the consultant's estimate on that. We are kind of working with that."

GAROFALO "Thank you. Are there any other questions?"

OSBORNE-HOWES "I just had a quick question about the surveys that were at the end. Who is the best person to address this to? Ray, would that be you?"

How did you go about deciding who you would survey? Did the consultant do that? Just identify two of the largest employers and some of the churches?"

ONTIVEROS "Yes, the consultant had some ideas on who should be surveyed. For part of that surveying, we had some of the membership in C.O.R.E. involved, for example. Bank of America had a representative who took some of the surveys to give to their employees and it was more to get a quick appraisal of what the interest was. Not so much a survey to be so scientific to give a proof of something, but to gauge interest."

OSBORNE-HOWES "I just noticed that the First United Methodist Church wasn't in here. I am a member of St. Mary's Cathedral, and it looked like the survey was just done in Spanish, so I am going to assume that that was probably done after the afternoon Sunday mass."

ONTIVEROS "Right. In that case, there was some discussion about the Hispanic community being interested because of all of the people that come into that church on Sunday, and that was seen as 'let's try to get some feedback from those folks to see if they would be interested in participating'."

OSBORNE-HOWES "I noticed that it was a slightly different survey, too."

ONTIVEROS "Very simplified, too. We had to because the translators wanted that."

BENDER "I would make the response that I was in Poland when that survey was taken and there was a small window and because I wasn't at the table, it didn't happen, but we have been in conversation. You will notice that a piece of our vision includes an assisted living center. We have folk in our congregation who have centered their lives in the congregational life and I know who, without question would value the opportunity to remain in the center city in an assisted living center if there was a community that was perceived to be safe and secure. And they would have greater access to their congregations than they now have in the centers that are out in the suburbs. We have done an informal survey and have discovered that there is

interest, but again, those are self-report kinds of surveys and the proof will come when there is opportunity for persons to step up and relocate."

WARREN "It would seem to me that our most successful effort over the last 25 years of redevelopment downtown has been where a large block of land was made available. I am talking about from Murdock down to First Street, the river area there where we have seen tremendous redevelopment efforts. I would wonder why most of that money wouldn't be used for land acquisition. If you get open land, you will get a developer."

ONTIVEROS "That is certainly part of the goal to get enough parcels together to make an attractive piece because of the diverse ownership. Also the group, C.O.R.E., is very interested in protecting some of the low and middle income residents. That is also going to be a part of this, but trying to find those sites on a somewhat private approach without Urban Renewal, for example, takes a little longer. That is why we need the City and the Federal Government, perhaps to provide some incentives or some kind of tools, like a redevelopment agency that the state could have or the City could have. If we had the ability to do some things that some other states do."

WARREN "I guess I am concerned about the numbers I was hearing you quote of around \$1-1/2 million for land acquisition and the balance for some kind of development, which would indicate to me that land acquisition is a big part of what you are looking at in that first budget."

ONTIVEROS "That land acquisition is not, did you say?"

WARREN "I thought I heard you say \$1-1/2 or \$2 million for land acquisition out of the \$12 million, which means that you are not going to put a lot of priority on land acquisition."

ONTIVEROS "Well, again, there are going to be a number of buildings in the areas where we have been looking at that probably will need to stay because of excessive prices that they want and the condition of the building and who they are serving, so that amount doesn't mean every parcel within this boundary that has been identified would be purchased. "

BENDER "We are talking infill as a major part of our strategy, so as much of it as we can, particularly in the area that we have identified, would be our first phase."

GAROFALO "I just want to make a comment. On Page 26 of the report, at the top I kind of question what it says there. It says 'because the Wichita Metropolitan market has not shown a demand for significant multi-family housing construction, in part due to the volume of construction in the early 1980s'. I am not sure that is valid anymore. There is a lot of multi-family construction that has been going on in the last few years."

ONTIVEROS "Yes, a lot of it did happen just two years ago."

GAROFALO "By the time anything gets started down here, I don't know, we may be overbuilt in multi-family. We probably are."

KROUT "It usually goes in cycles. Maybe two years from now, the market will be better. This is a special niche, too."

ONTIVEROS "Exactly. Marvin is right about that."

WHEELER "And by the time we get this project to actually occur..."

GAROFALO "Are there any other questions? Any other comments? Okay. We will take it back to the Commission. I think the action we have to take is on a resolution."

MOTION: That the Metropolitan Area Planning Commission recommend that the Center City Neighborhood Plan be adopted as a part of the Wichita-Sedgwick County Comprehensive Plan.

GAROFALO moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (9-0).

KROUT "We will forward this recommendation on to the City Council and County Commission for their adoption."

OSBORNE-HOWES "Just a comment. I think this is real exciting and I really liked the report. Good for you all."

2. Approval of MAPC minutes October 28, 1999

GAROFALO "Are there any corrections, changes or addition?"

MOTION: That the minutes be approved as submitted.

WHEELER moved, **PLATT** seconded the motion, and it carried unanimously. (9-0).

FRANK GAROFALO, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

3. Subdivision Committee items 3/1, 3/2, 3/3, 3/4, 3/6, 3/7 and 3/8 were approved subject to the Subdivision Committee recommendations.

PLATT moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (9-0).

- 3/1. **S/D 95-56** – Final Plat of BALTHROP 4TH ADDITION (Formerly CLARK ADDITION)), located north of Central, on the west side of K-96 Expressway.

- A. As this site is adjacent to Wichita's city limits, the applicant shall submit a request for annexation. If the Applicant chooses to complete the plat prior to annexation, both City and County consideration is needed and the County Commissioner signature block will be required.
- B. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted. This guarantee shall be with the County for service through the Four Mile Creek sanitary sewer system. On the final plat tracing, appropriate wording shall be added to the Mayor's signature block indicating the City's agreement to allow a County sewer district to be formed within the City. County Engineering requests a sanitary sewer layout.
- C. The applicant shall guarantee the extension of City water to serve the lots being platted.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. City Engineering needs to comment on the status of the applicant's drainage plan. City Engineering has approved the drainage plan. A drainage guarantee and an off-site drainage agreement is required.
- F. The applicant shall provide a guarantee for the paving of the interior streets. This guarantee shall also provide for a sidewalk along one side of the looped street (Tipperary/White Tail/Bracken) and the related street connections (Woodridge and Tipperary).
- G. City Fire Department needs to comment on the need for an emergency access easement to provide for two points of access to this site. City Fire Department has limited development to 1600 feet from the closest intersection in the Balthrop Addition until an emergency access easement is installed.
- H. City Fire Department needs to indicate if the street names being platted are appropriate. The street names are acceptable.

- I. Lots 21-24 exceed the maximum depth to width ratio of 2.5 to 1 and a modification will need to be granted. The Subdivision Committee has approved the modification.
- J. To allow for County Surveyor approval, the appropriate signature block needs to be added.
- K. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

3/2. S/D 99-54 – One-Step Final Plat of HOSKINSON 2ND ADDITION, located on the southwest corner of 37th Street North and Ridge Road.

- A. Since this property is adjacent to the City of Wichita, the Applicant shall request annexation into the City.
- B. Since sanitary sewer is not currently available to serve this property, the applicant has contacted the Health Department regarding the possibility of a temporary on-site sewerage facility. A memorandum shall be obtained specifying approval. Health Department has approved the temporary on-site facility contingent upon the site's connection to future City sewer.
- C. The site is currently located outside of the Northwest Wichita Sanitary Sewer growth limits. The Applicant shall guarantee the extension of City water and sanitary sewer to serve the lots being platted. An additional utility easement is needed along the north line of Lot 4 or along the south line of Lot 2, for the sewer extension to Lot 9. .
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. City Engineering needs to comment on the status of the drainage plan. The drainage plan is approved. A cross-lot drainage agreement is required.
- F. To allow for City Council approval of this plat, the City Council signature block shall be included on the final plat tracing.

- G. The owner noted on the platting binder needs to be a signatory to this plat.
- H. The plat is in compliance with the CUP which limited the plat to two openings along 37th St. North and three openings along Ridge Road. The five joint access openings shall be established by separate instrument. Any openings located within 250 feet of the intersection are limited to right turns only which should be denoted on the face of the plat.
- I. In accordance with the CUP, cross-lot access and circulation agreements shall be provided.
- J. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- K. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP (referenced as DP-242) and its special conditions for development on this property.
- L. The final tracing shall include a note that this plat is subject to the conditions of DP-242.
- M. In accordance with the CUP, the following traffic improvements are required: right turn lanes for the access points on Ridge Road and 37th Street North, a left turn lane on 37th Street North to Ridge Road, left turn lanes for all major access openings on Ridge and 37th St. North, and 12.5% of the signalization cost at the 37th Street North and Ridge Road intersections.
- N. Dimensions need to be added for the west lines of Lots 1, 2, 3, 4, and 9; the north line of Lot 1, the south line of Lot 9 and the sewer easement on Lot 8.
- O. The location of all found and set monuments needs to be denoted.
- P. The plat's text shall reference the minimum building elevations and wall easements and shall also reference access controls as being dedicated to the "appropriate governing body".
- Q. The plat's text shall note the platting of "Lots and a Block".
- R. The legal description needs to be revised to accurately denote the bearings for the north and east line of the section.
- S. The location and elevation of on-site and off-site benchmarks should be provided.
- T. County Fire Department has requested an increase in width of the 30-ft access openings to 40 feet.
- U. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- V. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- W. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- X. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Y. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Z. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- AA. Perimeter closure computations shall be submitted with the final plat tracing.
- BB. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- CC. The representatives from the utility companies should be prepared to comment on the need for any additional utility

easements to be platted on this property. Southwestern Bell has requested additional easements.

- DD. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

3/3. S/D 99-83 – Final Plat of HARVEST CHAPEL 2ND ADDITION, located on the southeast corner of Seneca and 55th Street South.

- A. City water is available to serve this site. City Engineering needs to comment on the need for any guarantees or easements. A petition for sewer extension to the south line of the plat is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. No guarantees are required. Drainage improvements will be required at time of the site development.
- D. Traffic Engineering needs to comment on the access controls. The plat proposes two access openings along 55th St. South and one access opening along Seneca. Distances should be shown for all segments of access control. The final plat shall reference the access controls in the plat's text. The applicant shall guarantee the closure of any openings located in areas of complete access control. Traffic Engineering requests an access opening to be located on 55th South along the plat's east line and on Seneca along the plat's south line.

The requested access controls have been denoted on the final plat.

- E. Traffic Engineering should comment on the need for improvements to perimeter streets. No improvements are required.
- F. The platting binder indicates that a mortgage is being held in this site. This party shall be shown as a signatory on the final plat tracing or proof provided that the mortgage has been released.
- G. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility

easements to be platted on this property.

- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.
- R. The Subdivision Committee approved a modification to the Subdivision regulations to waive the required right turns only at access openings located within 250 feet of the intersection.

3/4. S/D 99-93 – One-Step Final Plat of RIDGE PORT 4TH ADDITION, located on the east side of Ridge Road, north of 29th Street North.

- A. Petitions have previously been submitted for paving, drainage, sewer and water improvements for the Ridge Port Addition. City Engineering requests a respread agreement for special assessments due to the lot reconfiguration.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- E. The plat has indicated complete access control along the site's frontage to Ridge Road. The access controls shall be referenced in the plat's text.
- F. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves which are not being replatted by this Addition, a restrictive covenant shall be submitted which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- G. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- I. The year "1999" shall be replaced with "2000" on the plat's text.
- J. Distances from the tie points to the property shall be denoted.
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- Q. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- T. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional easements.
- U. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

3/6. S/D 99-91 – One-Step Final Plat of OAK RIDGE 3rd ADDITION, located on the north side of 29th Street North, east side of Tyler.

- A. Petitions have previously been submitted for paving, drainage, sewer and water improvements for the Oak Ridge 2nd Addition. City Engineering has requested a respread agreement for special assessments due to the lot reconfiguration.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- E. Since this is a replat of a previous Addition involved with the ownership and maintenance of reserves which are not being replatted by this Addition, a restrictive covenant shall be submitted which provides for this Addition to continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.
- F. The County Surveyor requests the closure of all of the lots.
- G. The tie point at the northwest corner of the plat should read "SW ¼".
- H. The legal description appears to be incomplete.
- I. The street right-of-way dimensions need to be added at the taper to the section lines.
- J. The distance from the tie points to the property needs to be denoted.
- K. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development

of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- Q. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional easements.
- V. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

3/7. S/D 99-92 – One-Step Final Plat of PHAT AN TEMPLE ADDITION, located north of MacArthur on the east side of West Street.

- A. Since sanitary sewer is not available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. Municipal water is available to serve this site. City Engineering has requested a petition for future extension of sewer services.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. A floodway reserve is needed in Lot 2 covering the existing ditch.
- E. County Engineering needs to comment on the access controls. The plat proposes one access opening per lot. County Engineering has required access control except for one opening.
- F. County Fire Department has requested the site be in conformance with Fire Department regulations.
- G. The Applicant is advised that if under separate ownership, the accessory structure on Lot 2 would not be allowed without a principal structure also being located on the same lot.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- J. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to

meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.

- N. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

3/8. D-1780 – Dedication of a Utility Easement from B.G. Products, Inc. for property generally located between Orme Street and Kellogg, and Water and Wichita Streets.

LEGAL DESCRIPTION: Lots 11-21 (odd) Fechheimer's Addition.

PURPOSE OF DEDICATION: As a requirement of a vacation case (V-2196) this Easement is being dedicated to allow construction and maintenance of public utilities.

Planning Staff recommends the granting of this dedication be accepted.

3/5. S/D 99-89 – One-Step Final Plat of CESSNA ADDITION, located on the southeast corner of Ridge Road and K-42 Highway, located on the southeast corner of Ridge Road and K-42 Highway.

- A. As this site is adjacent to Wichita's City limits, the Applicant shall submit a request for annexation. In the alternative, Cessna may request the site be included within their special Industrial District, which is exempt from annexation.
- B. The Applicant shall guarantee the extension of sanitary sewer and municipal water. These improvements will be with the City of Wichita and consequently an outside-the-city water agreement shall be provided. City Engineering needs to indicate the need for any additional guarantees. An off-site drainage easement is needed.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- E. County Engineering needs to comment on the access controls. The site is limited to access from Ridge and 31st St. South, and the final plat shall denote complete access control along K-42 as required by KDOT. The plat denotes three proposed access openings along Ridge Road. The final plat shall reference the access controls in the plat's text.
- F. County Engineering shall comment on the need for any additional right-of-way along perimeter streets. County Engineering requests additional right-of-way along Ridge Road - 75-feet to the center of the south two lanes at the K-42 intersection, tapering to 60-feet.
- G. County Engineering shall comment on the need for any street improvements. County Engineering has required a guarantee for a center left-turn lane along the frontage to Ridge Road.
- H. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- I. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to

submittal of this binder and any relevant conditions found by such a review.

- J. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- M. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- N. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- R. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- S. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

OSBORNE-HOWES "I need to abstain on this item. I have a conflict of interest."

NEIL STRAHL, Planning Staff "Is there a question on this item?"

JOHNSON "I noticed that Cessna has built quite a retention pond directly east of this, which I would assume is part of the drainage plan for this area. I know here a while back, we had a plat that was in front of us that was on the other side of K-42 and they ended up digging a retention pond just north of the one they just did and there was quite a bit of flooding in that area this last time we had that 6 or 7 inches of rain that retention pond worked. I noticed when they started digging this one south of K-42, they moved some of that dirt back into that retention pond that they dug north, and I am curious as to why."

STRAHL "Well, the City Engineering did approve the drainage plan. I didn't see it. Unfortunately, I don't know the specifics. Perhaps the applicant can clarify things for us. "

GAROFALO "Is the applicant here?"

STRAHL "The agent is here."

GARY WILEY "I am here on behalf of the applicant. Bill, you are talking about the detention pond north of K-42? Off of Hoover?"

JOHNSON "Yeah."

WILEY "Yeah, there is an expansion going on up there. It will end up going to a detention pond finally pretty close to half a mile, as I recall."

JOHNSON "Do you know why they started filling some of that back?"

WILEY "They were filling in the back side."

JOHNSON "It looked to me like they were raising the bottom of it. To me, the capacity is going to be less."

WILEY "I do know that that pond will extend to the north further on the airport property. In fact, we are platting the airport property through there right this minute. That will be part of the drainage plan to extend that on to the north. That area that you are talking about is actually airport property leased by Cessna. "

JOHNSON "I knew they had dug it and we had a pretty good test on it and it worked and I see them now raising it. They are filling it back in."

WILEY "I am not sure what that is about, but I do know that that pond does go north almost another half a mile. All along Hoover frontage. And this particular plat will also have detention systems with it."

GAROFALO "Are there any other questions? Thank you, guys."

MOTION: That the Planning Commission recommend to the governing body that the request be approved, subject to recommendations.

WHEELER moved, **CARRAHER** seconded the motion, and it carried with 8 votes in favor. There was no opposition. Osborne-Howes abstained.

3/9. V-2211 – Robert Battaglear requests the vacation of a portion of a platted utility easement described as:

The southerly 4 feet of the 10-foot platted utility easement along the northwest property line of Lot 1, Block 1, Huntington Place 6th Addition, Wichita, Sedgwick County, Kansas EXCEPT the westerly 10 feet, located on the north side of 29th Street North, east side of Tyler.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time December 21, 1999, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described drainage easement, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of a portion of a utility easement described in the petition should be approved, subject to the following condition:

1. The applicant shall dedicate, by separate instrument, a substitute utility easement to cover a sewer line along the northerly corner of the lot.

The Subdivision Committee recommends approval, subject to the following condition:

1. The applicant shall dedicate, by separate instrument, a substitute utility easement to cover a sewer line along the northerly corner of the lot.

GAROFALO "Is there anyone here to speak on this item? This is at 13th Street North and Maize Road. Sir, are you here to speak on this?"

MAN FROM THE AUDIENCE "I don't know if I need to speak on it or not. I think I have met all of the requirements you required at the last meeting."

LISA VERTS, Planning staff "He is the applicant. I have nothing to add since the Subdivision Committee meeting. All of the comments from that meeting were placed in the staff report that was sent to you."

GAROFALO "Does the applicant want to speak?"

VERTS "I think the applicant is just here to answer questions if there are any."

GAROFALO "Okay. Do we have any questions of the applicant?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

GAROFALO moved, **WHEELER** seconded the motion, and it carried unanimously (9-0).

3/10. V-2212 –Gerald Snodgrass requests the vacation of a street right-of-way described as:

That part of Irving Street as dedicated in Verda Vista, Sedgwick County, Kansas, lying north of and adjacent to Lot 1, in said addition. Generally located east of Maize Road and 1/2 mile north of Kansas.

LISA VERTS, Planning Staff, "I have nothing to add since the Subdivision Committee meeting. All of the comments from that meeting were placed in the staff report that was sent to you."

GAROFALO "Is there anyone here who would like to speak on this agenda item?"

PHIL MEYER "I am here only if you have questions."

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

WHEELER moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (9-0).

Barfield arrived at the meeting at 1:40 p.m.

4a. Case No. SCZ-0798 – Derby Recycling and Transfer Station, LLC, (applicant) H.D.Mills/H.D. Mills, (agent) request zone change from "RR" Rural Residential and "GI" General Industrial to "LI" Limited Industrial; and

4b. Case No. CU-556 – Derby Recycling and Transfer Station, LLC, (applicant) H.D. Mills/H.D. Mills, (agent) request a conditional Use Permit to permit a transfer Station/Recycling and Processing Center on property described as:

Government Lots 3 and 4 and that part of the Southeast Quarter, all in Section 13, Township 29 South, Range 1 East of the 6th P.M., lying West of the Westerly right-of-way line of the Atchison, Topeka, and Santa Fe Railroad, excepting therefrom the tracts heretofore deeded by deeds recorded in Book 1230 of Deeds at Page 91, and in Book 1467 of Deeds at Page 489 in the Office of the Register of Deeds of Sedgwick County, Kansas, and except that part condemned for highway purposes in Case A-46833 in the District Court of Sedgwick County, Kansas, and excepting therefrom that part platted as Lot 1, Block 1, in Lusk Industrial Addition, and Addition to the City of Derby, Sedgwick County, Kansas, and except that part condemned in District Court Case C-26941. Generally located at 91st Street South and Buckner.

DALE MILLER, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is seeking to rezone 56 acres from the "RR", Rural Residential district to the "LI", Limited Industrial district to permit a "Recycling Processing Center" and obtain a Conditional Use permit to operate a solid waste "transfer station" on 70 acres (including the previously mentioned 56 acres) located at 91st Street South and Buckner (1401 south Buckner). Currently, 14 acres of the 70 acres for which the Conditional Use is being sought are already zoned "GI" General Industrial and is being used for landfill, compost or recycling activities. A portion of the site has a permit from KDHE for construction-demolition debris disposal and composting operations, and is being used for those purposes today. Other portions of the site are currently unused.

Access to the site is provided by both 91st and Buckner Streets, which are unpaved near the application area. The applicant's site plan depicts two possible sites for the location of the transfer station. The northern site is the applicant's preferred site. A more detailed site plan for the northern site depicts a 12,500 square foot building which would house the tipping floor and office. The scales would be located nearby to the northwest. This building is oriented with its longest axis north to south. Ten visitor-parking spaces are shown on the north side of the building. (County Code Enforcement indicates that approximately 13 spaces will be required for a building the size shown on the detailed site plan.) The remainder of the tract would be used for landfilling, recycling and processing operations.

The applicant indicates that the maximum volume he could hope for is 500 tons per day. He does not expect to receive that volume due to competition and the scale of his operation. If the site did receive 500 tons per day, The applicant anticipates that volume would result in an increase in an average daily volume of 35 to 40 vehicles. (It should be noted that the eastern most portion of the applicant's ownership is not included within the area covered by the applicant's site plan.) Hours of operation are 8:00 a.m. to 5:00 p.m. Monday through Friday, 8:00 a.m. to 3:00 p.m. on Saturday.

Derby's wastewater treatment plant is located to the east, within the city limits of Derby, on residentially zoned land with a special permit for the treatment plant. There is an industrial use to the north, within Derby, which includes scales and office buildings for the landfill and transfer station that the applicant currently operates. The applicant has lost the lease for that property so those improvements will be moved south onto the applicant's new site.

CASE HISTORY: In 1985 a request for a Special Use Permit to establish a demolition construction landfill (DR 86-4), and a request to rezone land from "RR", Rural Residential to "GI", General Industrial (SCZ-0542) were withdrawn. In 1986 a Special Use Permit to establish a demolition construction landfill (DR 86-4), and a request to rezone 14 acres from "RR", Rural Residential to "GI", General Industrial were approved by MAPC, denied by the County Commission and then approved by District Court.

This case was originally scheduled to be heard by the MAPC on December 16th. However, the Derby Planning Commission were unable make a recommendation at their December 2nd meeting, and requested the MAPC to defer the case until they had a change to obtain additional information. At the December 16th meeting, the MAPC deferred the case to their January 13, 2000 meeting. At the Derby hearing on December 16th, they recommended:

Approval of the request for "LI" zoning subject to the conditions referenced in the MAPD staff report and the following conditions:
no trees providing screening for nearby or adjacent properties can be removed; no composting is permitted in the 100-year floodplain;
no correctional facilities are permitted on the property; testing of groundwater and soil shall be conducted by the appropriate agency.

Approval of the "Conditional Use" request for the transfer station subject to the conditions referenced in the MAPD report and the following conditions: the size of the property authorized for the transfer station is limited to 12 acres; an enclosed storage tank is to be used to contain runoff and monitored by the appropriate agency.

ADJACENT ZONING AND LAND USE:

NORTH: "RR", Rural Residential and "M-1", Industrial (Derby); vacant and solid waste landfill / transfer and composting activities, agricultural
SOUTH: "RR", Rural Residential; vacant and residential
EAST: "Derby residential zoning with a special permit; waste water treatment plant
WEST: "RR", Rural Residential; Arkansas River

PUBLIC SERVICES: 91st Street and Buckner Street are two-lane unpaved roads near the application site. K-15, a divided four-lane facility is less than one-quarter mile to the east, via 91st Street. Traffic volumes are not available. City of Derby sewer and water lines exist in Buckner. Staff is contacting appropriate officials regarding any concerns they may have with north bound left turns on K-15 from 91st Street.

CONFORMANCE TO PLANS/POLICIES: The Wichita/Sedgwick County Development Guide identifies this area as appropriate for agricultural and related uses. The Derby Comprehensive Plan also depicts this area as appropriate for agricultural uses. In 1996, the Unified Zoning Code established solid waste transfer stations as uses conditionally permitted in the Rural Residential and the two industrial districts. Recycling processing centers are permitted in the General Commercial, Central Business, Office Warehouse, Industrial Park, Limited Industrial and General Industrial districts. Facilities built in the Limited Commercial district have 10 conditions to comply with. When recycling facilities are located in the other zoning districts, they have only one condition to comply with: Prior to establishing a public recycling collection station, the operator shall obtain a location or building permit, as applicable, from the Zoning Administrator. Operation of the station shall be subject to approval of the health officer.

Sedgwick County has specific regulations regarding the site design for facilities of this type: access roads are to be paved; on-site roads shall be maintained in good condition; a minimum size of 15 acres is required for a facility designed to receive more than 500 tons per day; transfer stations are to be located 100 feet away from public roads and other property boundaries; 500 feet between transfer station and any building not on-site unless written permission is granted by the nearest property owner, but no less than 300 feet between the transfer station and waste storage areas and the nearest residence or school; the site is to be reasonably screened from adjacent roadways; 80 percent of the surface area not used for parking, ingress/egress or transfer station shall be covered by vegetation or organic groundcover; transfer operations are to occur in an enclosed building (excluding white goods and yard waste); yard waste is not to be accepted at the transfer station; each facility shall have one common gate for all customers; the facility shall be open to all customers for the same hours of operation; an enclosed area available for public education and capable of seating 40 people is required; and provisions for handling banned waste must be made.

Attached is a letter from the Director of Sedgwick County Resources outlining the county's policy towards transfer stations. It indicates that the Board of County Commissioners supports the private ownership of transfer stations, that the number of stations that can be built will be determined by market demand and that there is a need for facilities of this kind throughout the county.

Finally, the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1 year and the following conditions:

- A. The Conditional Use Permit for the transfer station shall apply to the northernmost location and that a legal description describing that location be provided prior to hearing by the governing body. Prior to this request being forwarded to the governing body, the applicant shall submit: a revised site plan that depicts the location of the transfer station and provides more building detail (e.g. size and location of openings on the tipping floor enclosure, public education area), screening plan, general location for each activity and clarification of what is to happen on the eastern portion of the property not included in the site plan.
- B. The Conditional Use for the establishment of a solid waste transfer station shall be subject to all applicable local, state and federal regulations and laws, and prior to beginning operations, all applicable local, state and federal permits shall be acquired.
- C. The use of the site as a solid waste transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit. The tipping floor area shall be completely enclosed except for openings with operable doors for loading / unloading and pedestrian / emergency doors.
- D. At the time of platting, the applicant shall submit a drainage plan to the Health Department and to the Sedgwick County Department of Public Works (Derby) for approval. All runoff within the tipping facility shall drain to a holding facility. All outside runoff shall be properly confined, filtered, and/or treated to prevent contamination, as deemed appropriate by the County (Derby).
- E. A landscape plan shall be submitted to the Planning Director for approval prior to issuance of a building permit, indicating the number, location, size and type of plantings and method of watering. Landscaping shall be installed in conformance with this plan prior to operation of the facility and maintained in conformance with the plan.
- F. Temporary outside waste storage of materials shall be stored or confined in a manner that prevents waste from being blown beyond the site.
- G. Outside building walls and roof surfaces shall be predominantly muted in color intensity, with bright white colors limited to a maximum of 10 percent of the total surface area.
- H. No off-site signs are permitted on the property. Building signs shall be limited to a maximum of 10 percent of any wall surface.
- I. Violation of any of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Land on all sides is zoned Rural Residential, residential (Derby) with a special use permit for a waste water treatment plant, or industrial (Derby). There are agricultural, landscape nursery, wastewater treatment plant, the Arkansas River and vacant land uses surrounding the site. The character of the area is a combination of undeveloped, agricultural and industrial uses.
2. The suitability of the subject property for the uses to which it has been restricted. The property is zoned "RR", Rural Residential, and "GI", General Industrial with a Conditional Use permit for a landfill. The site is not suitable for residential for residential use given the fact that landfill operations have occurred on the site and due to its proximity to the wastewater treatment plant.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered by the river, creeks and other industrial or agricultural operations. The conditions attached to the approval of this request and the licensing minimize any detrimental effects.
4. Length of time the property has remained vacant as zoned. The Rural Residential zoned property is currently vacant. The General Industrial zoned property has been used for landfill since 1986.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. However the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas. This site meets these requirements.
6. Impact of the proposed development on community facilities: The site will generate little if any increased traffic over current operations and the demand for municipal services (sewer / water) should be minimal if those services are required.

MILLER "An issue that you probably should be aware of is, and at your places there should be a flood plain map. As you may recall, this case was originally before you, a couple of weeks ago, but the Derby Planning Commission was not able to come to a decision on the night this was originally presented to them, so they deferred it and asked you to defer it, and you did so.

Derby did hear this on the 16th and on Page 3 of the staff report, midway through, is a summary of their recommendations. You should have received a full set of the minutes of the Derby Planning Commission. The summary of those is that they did recommend approval of the request for the 'LI' zoning, subject to conditions contained in this staff report. We do have some additional comments to make as well, but primarily what they were after, as you can see, there is quite a bit of tree cover, and then this is the creek that runs through here and partially forms the southern and eastern boundaries of the application area. On the picture sheet map you can kind of see how, on that eastern boundary, it kind of meanders through there. That is Spring Creek. What they have recommended is that no trees providing screen for nearby or adjacent properties can be removed.

There are at least two homes that we have identified, one in this (indicating) location, and another one in this general location where these trees in this area provide screening for the offsite improvements. They have recommended no trees providing screening for nearby or adjacent properties can be removed. They also said no composting is permitted in the 100-year flood plain. The white area that is listed as the 100 year floodway is the area where if there was a flood of 100 year magnitude, that is where the water would be flowing, and then to the right of that, in the darker area is the 100 year flood plain that Derby is referencing, saying that there shouldn't be any composting activity in there. Then there are a couple of areas that have 500 year flood plain on them and then a little bit that is out of the flood plain completely. So, if you were to follow their recommendation, there will be very little of this site that is left that could be used the way they have made those recommendations.

They also wanted to make sure, since there was 'LI' zoning involved in this that at some point in the future, no correctional facilities could be permitted on the property, so that was specifically prohibited. They are also requesting the testing of groundwater and soil being conducted by an appropriate agencies. With reference to the Conditional Use for the transfer station, they also referenced the conditions in this report and restricted the size to 12 acres. The reason for that was that under the County's guidelines, you are not supposed to accept more than 500 tons a day for a facility that has less than 15 acres. If you have more than 15 acres, you can go over that 500 ton per day cap. So they were particularly concerned about making sure that there was some maximum amount that could be received and in their opinion, at least based on the way I saw their discussions, that 500 tons per day was the number they were after to be putting a cap on.

They also wanted an enclosed storage tank to contain run-off, and for that run-off to be monitored by an appropriate agency. As you can see, there is a pond area. I think the applicant was initially proposing that any run-off that would come from the transfer station could then be channeled to that pond and retained there, but they wanted it to be put into a container. Are there any questions?"

GAROFALO "Dale, what 23 acres are they talking about?"

MILLER "On this site plan, the 12 acres would be an area right up in this area (indicating)."

GAROFALO "Point out the total area that the applicant is asking for."

MILLER "The application, at the time that he filed it, because it was a total of 70 acres, we listed all 70 acres because we didn't know for sure exactly where it was going to go, and we knew that as we went through this process, there could be difference of opinions on where it should belong, so we advertised the whole acreage, but never intended for the CU to cover the whole acreage for the Transfer Station."

WHEELER "I would just like to make sure that the 12 and 15 acres issue is for the Transfer Station site only and does not have to include the landfill composting area or the construction area. These are two separate things?"

MILLER "Correct. The recycling processing, which would include the composting is a permitted use by right in the 'LI' district, so if he does get the 'LI' zoning, then he would be approved for that in terms of the Zoning Code.

Now, one of the amendments that we are proposing because of the sensitivity to the Flood Plain area and to the folks that live along the south and east side, what staff is going to recommend is that there be a buffer established along this south and east line where there couldn't be any composting activity, say within 200 or 300 feet of that south and east line to protect those folks along the creek. And then, depending on your opinion, in terms of whether you support the Derby recommendation that there be no composting in the 100 year flood plain, then he would have very little room to do any composting.

We have talked this proposal over with Jim Weber and Susan Erlenwein, and staff is recommending that he be allowed to compost in the 100-year floodplain, not in the 100-year floodway. So that that would open it up a little bit and he would have room to do composting activity and recycling processing in the 100 year flood plain as long as it is only wood and demolition-type debris that would be appropriate for that kind of activity. We certainly want to exclude garbage and solid waste kinds of things that wouldn't be appropriate in the floodway or the floodplain."

WARREN "Dale, on his existing operation, would you say that he does have composting now. Could the Conditional Use permit allow it without the benefit 'LI' zoning?"

MILLER "It is a little hard for me to say exactly where everything is on the site. This aerial is really not good for seeing it, but you can kind of see, right in this area here, that there are some wind rows of what looked like shredded trees and maybe lumber and that sort of thing. I would say it was in the "GI" area today, but we didn't have it surveyed to determine that, but just eyeballing it, it looked like it was probably in the appropriate zoning.

The other things I would point out is that there is also a letter there that was placed at your seats, indicating the County Commission's position regarding transfer stations. It basically says that the County Commission has determined that private ownership of transfer stations is appropriate and that there should be multiple transfer stations throughout the County. I wanted to point that out to you. Susan Erlenwein and Jim Weber are here if you have particular questions about any activities they would have in reviewing this application if it goes further."

GAROFALO "Dale, on the Derby recommendations, going back to Page 3, the only thing staff is disagreeing with is the composting?"

MILLER "Yes. Based on our discussions with both Susan and Jim, if the site is to be used for recycling reprocessing, there really is no room if you don't let them do it in the 100 year flood plain."

GAROFALO "But the rest of those conditions that they pointed out you go along with?"

MILLER "Yes, I believe we were okay with those."

GAROFALO "Then on the second phase, the 12 acres, what is the position of staff on that?"

MILLER "We were comfortable with that because the applicant had indicated to me that based on his review of the competition and what he thought he could take in, that at least the discussions I had with him early, it seemed like if he ever got 500 tons per day, he would be doing more than he thought he would ever get."

GAROFALO "The BFI one up north at 37th that we approved a while back, how many acres was that, do you recall?"

MILLER "No, I don't remember."

GAROFALO "We were talking about a thousand tons per day."

MILLER "Susan tells me it was just under 17 acres."

GAROFALO "Okay. I thought it was around 15 or so."

MILLER "Are there any other questions?"

WARREN "In the Solid Waste Management plan that we have, is there any provision in that that these transfer stations would have to be made available to the individual user as well as to the commercial users, or is that up to the individual?"

MILLER "No. As I understand it, under the regulations, the hours would have to be the same for everybody. There could be no preferential treatment."

WARREN "You couldn't close it to a consumer or an individual user."

MILLER "That is my understanding. Susan may be able to speak more directly to that."

KROUT "On the 500 tons per day at 12 acres, it is my understanding that the County could waive the guidelines and permit more than 500 tons per day on a site that is under 15 acres. I had a discussion with the Derby planner and he just wanted to make sure that it was clear that the intention was to limit it to 500 tons per day, not just to 12 acres. Also, our discussions with the County Public Works about traffic were also based on limiting it to the facility that wasn't generating more than 500 tons per day."

So my suggestion to you is to follow the intent more clearly of the Derby Planning Commission's recommendation is to limit the extent of the operation, not just the acreage."

WARREN "Are you suggesting, then, to eliminate the language of the 12 acres?"

KROUT "The 12 acres will be automatically set by the establishment of this Conditional Use, which is 12 acres, but I guess that we are suggesting that you also indicate the limitation on the extent of the operation, the 500 tons per day."

WARREN "Except that it could be a little more than 12 acres if you limit it to 500. If that would be of any advantage to the user."

KROUT "Yes, if they could find something that is more than 12 acres, that is not a problem for anyone. I think that is what the Derby Planning Commission was more interested in, the scale of the operation, than with the size of the Conditional Use. They thought that the acreage was the best tool to control the scale. I am suggesting to you that the best way to do it is to say 500 tons per day, whatever the applicant thinks is the area he needs for the Conditional Use. If it is more than 12 acres, that is fine."

WARREN "Right. Then not put a limit on the acreage."

KROUT "Right."

MILLER "And then just for the sake, since this 'LI' zoning does permit this by right in terms of the restrictions in 'LI', we would be handling this as a Protective Overlay. Just to clarify that."

OSBORNE-HOWES "For the record, what is the difference between the floodway and the floodplain?"

MILLER "The floodway is where you would expect the water to be flowing, whereas the 100 year floodplain is the fringe area where you could have a flooding event, but the water would not ever be up there. It depends on the magnitude of the event."

OSBORNE-HOWES "The reason I asked that question is that I am trying to refresh my memory, but it seems like they are going to be cleaning out the Cowskin Creek area, and I thought they said in the 100 year floodplain to get rid of limbs and trees and that sort of thing. So if we are allowing collecting in one and we are cleaning out in another part of town, I am just confused. Am I making myself clear on that?"

MILLER "Jim is here. Maybe he can help with that."

JIM WEBER "I am with the County Public Works. Dale does a fine job here, but he didn't quite get that one right. The floodplain, as things exist anywhere in the floodplain, if the 100 year flood comes, the entire floodplain will be flooded. In this case, that will include the composting, if you allow that to happen in the floodplain, it would include the composting area."

The computer model then actually sits there and starts moving that floodplain limit incrementally in until it reaches a point somewhere, in this case, on the Arkansas River, where the floodwater for the 100 year flood goes up by one foot and stops. So the real meaning of it is that the whole floodplain gets flooded. You can fill it in up until the floodway line, coming to that white space and then you have to stop because you have exceeded the rise on the river that is allowed. That place in between, we call the flood fringe.

If it floods down there, the whole floodplain will get wet. If we get the 100 year flood. We would allow development to occur in the flood fringe only out to the floodway line because that will then cause an unacceptable increase on the flooding in the river system as a whole."

OSBORNE-HOWES "So in other parts of town, are you cleaning out the floodplain? I hear about clean-up efforts along the Cowskin after the flood because they said so much debris and such has collected, so they are sending out people to clean up."

WEBER "Generally, you are working with the entire flood plain because that is the conveyance that exists."

OSBORNE-HOWES "I guess I am confused why you would allow collection in one area in the flood plain, whereas in another part you don't. The flood in October was partly blamed on all of the debris and such that collected in the flood plain, so in one part of the community you are cleaning it out and in the other you are collecting it. Am I the only one that sees that confusion?"

GAROFALO "No, I am confused, too."

WEBER "In most places, there is not such a wide difference between where the floodplain line and the floodway line are. So if you are on the Cowskin and a lot of those places, they are right on top of each other. If you had to prioritize 'where am I going to spend most of my time cleaning?', I am going to be in the regulatory floodway, the main conveyance. "

OSBORNE-HOWES "I guess I am still confused. I hear what you are saying, the poor applicants can't build what they want to build in this area if they couldn't build in the 100 year floodplain, but..."

WEBER "I think, from our point of view, we couldn't care less what they are doing, but the way the regulations are, they could come in and fill that up with sand or dirt and create a fill and do development on it right now, so the regulations indicate that you could store materials out there in the flood fringe, as long as they are not hazardous or dangerous. That means if we tried to put a bunch of tanks out there that would get up, float away and end up in a bridge somewhere, that is dangerous. We wouldn't want to have that happen."

I might be concerned if it was actually brush piles that would float and come down to a bridge, but we have a composting operation where it is ground up material."

OSBORNE-HOWES "So it won't be any kind of brush or tree limbs or anything like that?"

WEBER "That is my understanding of it that it would not be. I think the regulations require that they would get a permit from the County for floodplain development, and they will need a permit from the State for floodplain development, and in that permit, we would be specifying, since it is stored materials, what specifically they would be requesting to put in and we would allow it or not allow it."

GAROFALO "But there probably would be brush and stuff sitting around there ready to be ground up."

WEBER "And we would probably want that outside of the floodplain. They might have to handle it fairly quickly to get it ground up and then be able to wind row it over in the floodplain."

KROUT "According to this map that we have from Dale, it looks like the wind rows are in the 100 year floodway."

WEBER "The windrows in the floodway don't bother us. It is ground up material. They will get up and float away and go down the river and end up in somebody's wheat field, but they are not large chunks. If we had truckloads of brush coming in and that was piled up in the flood plain, that would be bothersome. Those get up and float and end up in bridges somewhere. I am talking entire trees or something like that."

GAROFALO "What was the Derby Planning Commission's concern about the flood plain? Why did they put that condition there?"

MILLER "There seemed to be a lot of discussion centered on whether or not any of this material would ever be a pollutant in the flood plain and flood way, and that is what they seemed to talk a lot about. There may be other reasons, but they spent a lot of time talking about monitoring wells that either were supposed to be there or were not there, and had they ever been monitored and those sorts of issues. And how effective of a screening process there would be on this material in terms of how could he guarantee that things that were being wind rowed wouldn't have things that weren't supposed to be in there. That kind of discussion."

JOHNSON "Marvin, this is probably a planning question. The 500-ton,...I guess I can see that if you limited it to 500 ton, we are going to end up with more of these throughout the County. Is this then going to become like communication towers so we will be hearing this type of cases all of the time, because this one can only have 500 tons?"

KROUT "The best person to address that to is probably Susan (Erlenwein). I think it becomes policy to promote more than one for the purpose of competition and convenience. There is a calculated tons-per-day that we think we are going to generate to the County. Susan, why don't you try to answer that?"

ERLENWEIN "I am with the Sedgwick County Environmental Department. Currently, the tonnage going into Brooks Landfill is around 1400 tons per day, just over that. BFI has a location at 37th Street North and West Street. They have planned their facility to take 1500 tons per day. Everything that we could produce in the community, in case there was not competition. The County would like competition, having more than one chance for a station facility. BFI has half of the collection in our community, so you would estimate that they would have at least 750 tons per day going to their facility if only their own trucks went to the facility and no one else used it."

Mr. Mills is wanting to get other material. Waste Management is currently looking at locations in the County as well, so there could be a third transfer station. I assume Waste Management trucks would go to their facility. Then the independent haulers would probably use Mr. Mills's facility. So I would imagine that he would have less than 500 tons per day."

WARREN "I think the consideration here, from what I have talked to people out there in those meetings, is if they go by their tons, they want to come back and make another application. I don't know that they are saying they will never take over 500 ton, but this is a new experiment with the City and they are saying that this is all they want to deal with at this time. If somebody can justify coming back later, well, then we can take a look at that."

ERLENWEIN "In fact, the discussion at the Derby zoning meeting was such that if he wanted to expand, he could always come back and approach them. And the County regulation was such on the 500 cut-off that if someone started receiving more material, they could come back to the County if they had less acreage and they could judge upon the request at that time."

GAROFALO "Is the 12 acres enough at this point?"

ERLENWEIN "That would be sufficient for a facility to take less than 500 tons per day to have the scale house and the staging area for the vehicles. That is sufficient for that. I have visited transfer stations that were on only 5 acres, but they were very compact and did not operate that well. That is why we determined our acreage break-offs."

GAROFALO "So if he has 12 acres, he has the option of coming back and asking for more if he goes over the 500?"

ERLENWEIN "For instance, if Waste Management never did site a transfer station in our community and it turned out he was receiving more material, he would have that opportunity."

GAROFALO "Are there any other questions? Okay, then we will hear from the applicant."

RUSSELL MILLS "I am an attorney, representing Derby Recycling and Transfer Station, LLC, who is the applicant. I brought some photographs with me I thought I would pass around if I can. This shows a panoramic view of the view from the street of this property. It is the applicant's position that we can certainly live with the recommendations of the City of Derby as far as it goes to the transfer station site. Obviously, it is our preference not to be limited. BFI wasn't limited in their transfer station, but we can certainly understand why the City of Derby may want us to be limited."

If it is your decision that that 12 acres be all that we can have permitted as a Conditional Use, we can certainly live with that. As to the other recommendations that were made, either by staff or by the City of Derby's Planning Commission, as far as it goes to the transfer station, we really don't have any opposition to any of those recommendations.

As to the recommendations regarding the 'LI' property, I think you have these maps in front of you. These are the floodway maps. The area that is in the gray is the area wherein we could do composting, and we would ask that we would be allowed to do composting in the floodway fringe, and I believe staff has recommended that as well.

If we are not allowed to do composting in the floodway fringe, we are essentially out of business. We presently have a permit for composting, and we were composting in the floodway fringe. We were somehow given that by mistake because we believed that we could compost in the 'RR' zoning. As it turns out, we couldn't compost in the 'RR' zone. It had to be in 'LI' zone, and when we found out about this, that is why we came in to request this change.

This site is one of only two large-scale commercial composting facilities in Sedgwick County right now. When the landfill closes in October 2001, all of the yard waste and wood waste, and things of that nature are going to have to go to one or hopefully two sites if you folks will recommend that we be allowed to continue in operation. If we are not allowed, then at present, that would leave the County with only one location to take yard waste and wood waste to be composted.

What happens when brush, for instance one of the ladies asked about brush? This might help a little. The area in gray is the area that we are talking about. The white is the floodway. Now, I think at the Derby Planning Commission meeting, we probably were not hitting on the same cylinder. I think we were a little bit confused about what is flood way, what is flood plain, and I think that is why we came away with the recommendation of no composting in the flood plain. My belief was that when the gentleman who made the motion was referring to the flood way, not the flood plain because it simply makes no sense to agree to an 'LI' zone change on all of this property down here when the only reason we made the application for the 'LI' zone change was so that we could compost. So to make a recommendation to approve the 'LI' zone change and then effectively say 'well, we are doing away with the practical effect of the 'LI' by putting in a condition that you might be able to compost in the flood plain or flood way fringe, which is the gray area. It would just be a nonsensical decision; nothing would have been accomplished. You would just have an 'LI' zone change, you would have absolutely no use that you could use that property for, at least for our purposes. So, that is why I believe that there was just a little bit of confusion as to what was flood plain and what was flood way and what the affect of that one term flood plain is as opposed to flood way.

So what we are wanting to do is a compost in this area. What happens when we compost is brush comes in, yard waste comes in, it is ground up into small particles and put then put in long, long wind rows of these ground up particles. I think you have all seen sawdust. We try to grind it as small as we can get it so that it helps with the compost. The smaller the particles, the better it is to compost. When you have a finished product to compost, it is very similar to a topsoil and it looks like a topsoil, like a dirt. That is what we are wanting to do at that location.

The bottom line is that this is a land use issue. We have a C and D landfill to the east, and now the sewer treatment plant to the east and a little bit to the north. This property is called the Lusk Industrial Division in the City of Derby, so this is industrial property already, and then down here we have the Arkansas River. This whole area, at one time, in different spots, even down in the flood way, at one time, was the City of Derby Municipal Solid Waste landfill. So this property really cannot ever be used for rural residential purposes. KDHE would have to agree to allow a break in the cover and it is highly unlikely that KDHE would ever allow that. We are not wanting to build anything...nothing in this area, in the area that we are wanting zoned 'LI' so we can compost. We are not even wanting to change the level of ground. All we want to do is put rows of compostable material on the ground. That is it. So, the recommendations that were made by the City of Derby to the 'LI' zone change, we can live with not taking out any trees. The trees, and you can kind of see the 'U' shape, this area is just filled with trees. When you see the photographs, you can tell that all of the way back across here and down this way are not in the trees. You cannot see through there, even in the wintertime when there are no leaves, you still can't see our site from the road. Most people don't even know that we are there.

I also would like to point out that we have been operating these different activities, and I believe there are some copies of permits that I provided to staff, hopefully they were provided to you, but we have been doing C & D landfill operations, composting, transfer stations, and a lot of solid waste recycling or processing activities at this location already, and we have only one complaint in the whole time we have been there and we have been operating since 1992.

So, as to the other restrictions, as to the 'LI' district, the testing of groundwater and soil, I am not really sure what they were getting at. We would want some clarification as to exactly what it was that they were wanting tested."

GAROFALO "Sir, your time is up. Will you need much more time to finish up?"

MILLS "No. I would ask that you follow the recommendations of staff and allow our 12 acres to be permitted as a transfer station, and the balance of the 56 acres to be in the 'LI' zone, and that the restriction of 'no composting in the flood plain' be modified so that we can do composting in the flood plain, as opposed to the floodway."

GAROFALO "Are there any questions? I have one. When you get this brush coming in, where would it be stored, or placed, or whatever?"

MILLS (Indicating) If you could look at the floodway map, right in this area, and then over in here, it is not in either the floodway or the floodplain, so we have an area where people come in to drop. There are three containers right here, big metal boxes that you saw in the picture. For instance, we have tires in one metal box, we have white goods, which are stoves, refrigerators and things like that that go in another metal box. We have used furniture or junk furniture in another metal box, and then in this area, we have an area where people come in and kick their brush off into a pile.

There was also a photograph of our grinder that you saw. That grinder is moved over and it grinds up all of this brush, this big pile of brush that several individuals, as well as businesses come in and drop off. It is ground up and moved into the wind rows."

GAROFALO "Are there any other questions?"

OSBORNE-HOWES "Are the wind rows permanent?"

MILLS "No. See, what happens is that the windrows,...we have another piece of equipment called a windrow turner. You kind of cook this mixture of yard waste, leaves, limbs, ground up wood and you start off with a pile, a 6 foot pile, and it cooks down to where it is a 3 foot pile. So the volume reduces itself and it changes in structure into this compost."

OSBORNE-HOWES "Is it permanent then, or do you then move that burned-up stuff, or whatever it is, what do you do with that?"

MILLS "What we do then is we use that. We also have a sand plant in this area, and what we are doing and what we intend to continue to do, if you folks allow us to, is to take this compost when it is in its final form, mix it with the sand that we take out of the sand plant, and it will be used as a soil amendment. The company that I represent is also the preferred demolition contractor for the City of Wichita, so when they knock down a building that has a basement in it, they knock out the basement and you have a big whole there. We believe it is better to put in a product that has a soil amendment in it rather than just sand. Grass will grow better."

GAROFALO "Are there any other questions? Okay. So you are in agreement with the 12 acres?"

MILLS "Yes. For now, we can get by, but I will tell you that it is going to make it kind of tight in here. But if that is what we have to do, that is what we will have to do. We would prefer to have the 15 acres, but the City of Derby wanted to make sure that they limited us to only bringing in 500 tons per day. Now, it is our hope that one day, we can get more than 500 tons per day. Is it realistic right now? No. Unless Waste Management, for instance, would not get their transfer station. And they are having trouble in Park City right now, as I understand it. So, if we only had two transfer stations, we will have BFI and us, and if we are limited to 500 tons per day, people in the south part of the County may have to haul their trash all the way up to the north part of the County, even though we are there."

To give you an example of that, the City of Derby itself is projecting a growth, by 2015, where they will have at least 35,000 people. If they have 35,000 people, the City of Derby, by itself, will have 140 tons per day. So there may be a bigger demand down in that area."

GAROFALO "Are there any other questions? Okay, thank you. Is there anyone else to speak in support of this application? Is there anyone here to speak in opposition?"

NORMA MOORE "I live at 9339 South K-15 in Derby. I am here today to speak on behalf of myself and my husband. We live on Spring Creek. Also for my parents, Roscoe and Carol Warren of 9529 South K-15, who are the others who live in this vicinity. Also, my son Brock Moore lives down the creek at 5721 East 95th Street South. He will also be affected by this. There is also a housing district across K-15 and they will be impacted by this."

I will try not to waste too much of your time today, but I feel certain, from the last time I was here that some of you may have already made up your mind about this. I am here because it may be my last opportunity to voice my opposition and that of my neighbors concerning this operation. Don't misunderstand. It is not that I have any false hopes that what I say today will have a strong impact on your decision. I don't believe it will, but I can't stand idly by and see something happen that I think is wrong. A mistake which directly affects my quality of life and those of my neighbors, my family, and my neighborhood south of Derby."

We are a working class neighborhood. We pay our taxes, support our communities and churches. In short, we have chosen to make our homes here in Sedgwick County. My parents bought the piece of ground that we live on in the mid 60s. At that time, this was a rural area, and the landfill area was also a rural area. I tell you this because I was told, at one point, that this had always been a landfill, that it was an investment and they needed to make money on this investment. I do understand that. In short, my answer to that was 'why not turn that property around and do something positive with it instead of continuing down the landfill path'? Something which would improve the property values and the neighborhood, and not continue to desecrate it. Get funding and turn it into a park or a nature center. This can, and has been done by forward thinking people and governments."

I believe it is time to stop considering just short-term profits for a few and coddling to applicant's rights and consider the rights of other taxpayers and homeowners' who have made this area their home. I am not against free enterprise. We all work to make improvements to our property and our community, and some of us are businessmen as well. When we return home at the end of the day to enjoy our homes, this peace is shattered by an onslaught of air, water, and noise pollution, which is an inevitable by-product of an operation of this type, not to mention the mental strain and the constant fear of what will be the next project that we will be subjected to, usually involving trash. How can we continually defend ourselves against this onslaught? How will it continue to devalue our property and degrade our quality of life? What do we have to look forward to?"

We have been told by the applicant that some residents may experience a decrease in the price of their trash service as a result of this transfer station, but as neighbors, what can we look forward to? We can look forward to hearing a continual line of trash trucks cycling in and out of the facility every day and on the weekends. It will add a certain ambience to sitting on our decks in the summer to be able to hear, see and smell this addition to our neighborhood. We can also look forward to the time when our rivers and streams which surround this area could be totally polluted, not to mention our groundwater, and unable to support our needs."

I realize every community is currently addressing the issue of solid waste. My view is, and I feel that my view is just as valid as anyone's in this room, that continuing down this same path of trash management that we are on, there is a very good chance that we will continue to get the same results. This is not acceptable. I know recycling is important and I agree that we have a lot of intelligent people looking at this issue, but this particular site, I don't feel should be included, for many reasons. I am just going to list a couple. Resolution No. R 170.148.1 of April of 1997, Sedgwick County when they were issuing the Conditional Use Permit for the construction demolition landfill for this area, there were a couple of conditions of approval that I particularly noticed. There was to be an 8-foot high fence installed on the east property line and along the north side of the floodway on the south. I don't know that this was ever done. There was to be installation and monitoring of at least four wells on site to monitor groundwater up slope and down slope from the site and it should remain in operation for 15 years from the date of the landfill closure. Was this done?"

GAROFALO "Ma'am, your time is up. Do you need more time?"

MOORE "May I have at least one more minute?"

MOTION: That the speaker's time be extended for one minute.

CARRAHER moved, **WHEELER** seconded the motion, and it carried unanimously.

MOORE "Thank you. The applicant indicated that he was not aware if these wells were in place, and that doesn't give me a feeling of confidence. State and County agencies were often ineffective in keeping the previous operation in compliance. This is not necessarily a condemnation of them; the system just doesn't always work. But when that happens, the landowners' and homeowners' are left to pay the price. I was told that if this did happen this time, one of my options was to sue. I don't believe that that should be my only recourse.

I offer that since this is going to be such a clean and efficient operation and will be of such benefit to the community, that perhaps the owners should consider converting land in their neighborhood to an operation of this sort or place it within the city limits of any city. It would be more convenient to residents. I was told 'these are residential neighborhoods', and my response is 'so is mine'. It may not be your neighborhood, but it is as important to me as yours is to you. This is a land use issue, and this proposal directly and adversely affects my rights as a landowner and this is personal. I oppose this project and I ask you to give this very careful consideration before you vote. The right thing to do is to vote no on this project."

GAROFALO "Thank you, ma'am. Are there any questions of the speaker?"

BARFIELD "Ma'am, can you tell me approximately what the distance is between your property and this property?"

MOORE "The two houses that they showed you, I am the one closest on the north and then my parents live around the bend of the creek and I am on the south. So we are very close."

BARFIELD "And did I understand you to say that when you purchased your property, the landfill was in place at that time?"

MOORE "No."

BARFIELD "It was not."

MOORE "No, it was a maize field, I believe. We rode our horses over there when we first bought our property."

GAROFALO "Is there anyone else to speak in opposition? Will you state your name and address, please?"

KEN MULANAX "I live at 100 Crooked Creek Court in Derby. I am a member of the Derby City Council. I guess opposition is not exactly the terminology to use. Because this did not come as an actionable item before the Derby City Council because it is a County case, the majority of the members of the Council just asked me to speak to you for just a second, recommending that you do accept the conditions that were placed upon this by the Derby Planning Commission, especially the one with the limit of 500 tons per day. We are not saying 'no' to the trash transfer station. We just want to have some control, at least in the beginning, on traffic control. Remember there is 500 tons coming in and 500 tons has to go out. So we have that many trash trucks coming in and then the 40-foot trailers taking it out. We would just like to have some time to judge how this is working and just have a handle on it, especially with enforcement working with the County and KDHE to make sure that this facility is not polluting. Our water wells are just right across the river from there. So we do have some concerns. That is one of the recommendations on the groundwater testing. On the compost; to make sure that if there is any drainage that isn't stopped inside the building, if it would happen to get out and leak into the ground.

So, we are just recommending that you do adopt the recommendations of the Derby Planning Commission. I believe Councilmember Avello would like to speak also."

DION AVELLO "I am also on the Derby City Council. I reside at 825 Honeybrook Lane. My concern is that there are two types of transfer stations. I am concerned that this may turn into a dirty Materials Recovery Facility (MRF). That is a burning transfer station. We in Derby, and my constituents are very, very concerned about that and I would not like to see that happen. If this is approved by this committee, can we have some assurance that that would not happen in that transfer station? That is one of my main concerns."

GAROFALO "Thank you. Are there any questions of the two councilmen? Okay. Commissioner Platt?"

PLATT "I am a little confused as to whether the two Councilmen are in favor of this project or not. I would like to have a very specific answer from both of them on that."

AVELLO "Myself, no. I am not in favor of it."

MULANAX "I am not in favor of it."

GAROFALO "Has the Council taken any kind of a position on this?"

MULANAX "No. It was not on the agenda, so it wasn't an actionable item. This was conversation we had during the Public Forum and a one-on-one conversation with other Council members. So we couldn't be 'directed' to come here, it was just the recommendation of the rest of the Council members that we speak to you today."

WARREN "Ken, at this time you are not really speaking for the Council, is that right?"

MULANAX "No, we're not. I want to make that clear. That is why I said that this was not an actionable item. They just informally asked us to speak to you today."

GAROFALO "Okay, the question you had sir, I think Susan Erlenwein may be able to respond to."

SUSAN ERLENWEIN "Our Solid Waste Plan does not allow a dirty MRF at this time. All it allows is a transfer station. Recyclables would go to what is called a clean MRF, such as Weyerhaeuser, that is currently in place on south 27th Street."

OSBORNE-HOWES "The applicant talked about burning or heating something."

ERLENWEIN "I think what he was referring to is the natural composting of organic material. Heat is produced."

KROUT "Are we talking about incineration, Susan?"

ERLENWEIN "No. We are not."

KROUT "I mean a dirty MRF, is that?"

ERLENWEIN "A dirty MRF is the term used for having your trash recyclables mixed together and basically a sorting line where the recyclables are pulled out from the trash and they are contaminated. It has nothing to do with burning the trash. So it is just a type of recycling that has been contaminated because it has been mixed with coffee grounds and everything else."

KROUT "And your current guidelines do not permit that kind of transfer?"

ERLENWEIN "Our current guidelines call for a transfer station to receive solid waste and transport it out of the area and for recyclables to go to a clean MRF."

PLATT "I am confused. Is this a clean or a dirty MRF?"

ERLENWEIN "What he was referring to is not a MRF at all. It is a transfer station. Recyclables are not pulled out. Material comes in and is taken to a subtitle 'D' landfill."

PLATT "But you are getting garbage into this transfer station?"

ERLENWEIN "Right. The waste comes in and is dumped on a concrete floor and then pushed into the transfer vehicle."

GAROFALO "Presumably it would be the same type operation as the other one."

ERLENWEIN "As BFI, that is correct."

GAROFALO "And under those guidelines. Are there any other questions? Thanks, Susan. Okay, the applicant has 2 minutes for rebuttal."

MILLS "I think Susan has pretty well addressed this issue of whether there is going to be incineration or whether there is going to be a dirty MRF. The guidelines that the County has established for a transfer station do not allow that. We couldn't do that even if we wanted to. So that is really of no concern at all, given the present state of the law."

As to will this affect property values, and I think one of the speakers spoke about that. There are a number of aerial photographs that I showed the Planning Commission in Derby. I showed them an aerial photograph of 1986, of 1995 and of 1997. To the south and to the west, there is a housing development. The housing development has continued to grow all throughout 1986 through to the present. So the fact that this facility has been here since the early 1970s has not affected the growth of the City of Derby as far as residential growth over in this area. What I am talking about is across K-15 highway. That is where your residences are located for the most part, with the exception of this lady's and her family. These two residences

are the only ones that we are aware of that are on this side of K-15. So we have K-15, you have the railroad going by there, you have the sewer treatment plant, so it is our position that if anything is going to affect property values in that residential neighborhood, it would be those things, not ours.

We have had no complaints about odor, no complaints about fires, no complaints about anything at all since we have been operating. We have operated this facility since 1992. What somebody did previously, whether they put wells in or didn't put wells in, that wasn't our responsibility. We didn't own the property back then, and didn't operate the property back then, so please don't punish us for what somebody else either did or did not do."

GAROFALO "Did you say earlier that a portion of this property was used as a landfill?"

MILLS "Yes it was."

GAROFALO "Do you know when? How far back?"

MILLS "Yes, I have an article from the newspaper saying that John Davis from the Health Department had located several old dump sites. This was one of them. It operated as the landfill and was used by the City of Derby from 1970 to 1981, I believe."

GAROFALO "Thank you. Are there any other questions?"

OSBORNE-HOWES "I couldn't see the site plan very clearly, and I don't have one at my desk, but does the site plan show exactly where the brush would be stored or could be stored and then the wind rows?"

MILLS "If I had the other drawing, this one shows..."

OSBORNE-HOWES "I know, but does your site plan identify where these wind rows could be placed and where the brush could be placed?"

MILLS "Just where it says 'compost area'. We didn't actually draw in wind rows and an area that shows where the brush would be placed."

OSBORNE-HOWES "I guess I was just curious whether you would be willing to accept some requirement that would show exactly where this stuff would be placed."

MILLS "Well, as far as where, we would ask that we would be allowed to have it anyplace within the floodway fringe, not in the floodway itself. We just want to put it in the floodway fringe. If we have to designate that it has to be here, has to be there and has to be here, we will be wasting space."

OSBORNE-HOWES "I am not really asking that type of specifics, but just because I would not want to see brush stored in that area, so if there would be one way of demonstrating perhaps where the brush could be. Maybe I am not making myself very clear on that."

MILLS "Let me give you an example (indicating). This whole area, called the sandy landfill, that is not even in the flood way fringe. We could, and we have, in this area right here, put our brush pile. We don't want to see anything float down the river either. We are supposed to be trying to make money off of this, not to let it float down the river. So, we want to put it in a place where it will be safe."

KROUT "Would you agree to conditions that say that there will be no brush stored in the floodway fringe, there will be no windrows in the floodway, and that you will identify on the ground where those boundaries are—the floodway fringe and the floodway."

MILLS "I guess it depends on how you are wanting us to identify them. If we are going to have to come through and put a fence all the way through, this is a big piece of property. That would be a huge expense, having to put a fence up right on our own property."

KROUT "I don't think it has to be by fence, but by markers that would be approved by Public Works, who has to give you this flood plain permit anyway."

MILLS "As far as the floodway, we won't have any problem with that."

KROUT "Just some way of identifying, for you and for the people who are concerned about enforcement of where you could do it."

MILLS "The only concern that I would have is, for instance, if we had a pile of brush and it was close to the edge here of the floodway fringe, when you have a hauler who comes in and he wants to dump his load, I can assure you that that hauler is not going to get out and say 'okay, am I in the floodway fringe or am I not in the floodway fringe?' He is going to try and put it in the pile as best he can, but that hauler is there to make money too. He is going to come in and dump this brush in the pile and get out of there. If there happens to be a branch that is across the line, then I don't know where we are. Is our permit going to subject to being revoked because we have some hauler come in and leave a couple of branches across the line. I hope that

we are not going to be nailed down that tight. If we do the best we can to make sure that people are coming in and putting this stuff where we want them to, but sometimes they dump it farther away from the pile than we want them to."

WARREN "Mr. Mills, how long would a pile that would be brought in there by a hauler normally be there until it would be grounded into compost?"

MILLS "Well, it would kind of depend upon what it is because grass composts quicker than wood."

WARREN "Well, let's assume it is a pile of limbs. How long would they normally lay there before you grind them?"

MILLS "Well, hopefully, with the right mixture of water and tree limbs, grass and things of that nature, the process should be able to be completed within 10 to 12 weeks."

WARREN "So 8 to 10 weeks is the longest it should lay there before you compost it?"

MILLS "I would say 10 at a minimum. Probably 10 to 12 weeks before it completes the process."

MARNELL "It would seem to me that if you are the operator of this process, and you would set your piles of debris to be ground up right on the borderline it would put you at risk, so why would you make such a point of limbs falling over the line?"

MILLS "All I am saying is sure, we could put them way over here (indicating), but there is activity in this area quite a bit. We have trucks coming in right now, to drop off C&D, and if you put your pile in the middle of a C&D landfill, it is not convenient for these truck drivers to come in, for instance if you had a pick-up, and in the pick-up you had the trimmings of your tree. You put your tree limbs in the back of that pick-up and you came in here, you are going to have large trucks in this area, you are going to have compactors in this area, you are going to have a lot more activity in this area. We are trying to keep the activity separated away as much as we can, keeping the smaller trucks and pick-ups and brush as far away from the bigger trucks and the more activity which is in this area right here. So just from a safety issue, if nothing else, we want to keep those two as far apart from each other as we can."

JOHNSON "He answered Commissioner's question, but are you saying that you will only grind this stuff up every 8 to 10 weeks?"

MILLS "No. When it comes in, we grind it."

JOHNSON "How soon do you grind it once it is there?"

MILLS "Normally, once a week."

WHEELER "So the limbs at most lay on the ground a week to ten days before they are ground."

MILLS "Right. KDHE also comes out and monitors us to make sure that we are grinding this stuff up in a timely manner."

WHEELER "So when it is finished, you actually sell it for some form of top soil or filler, and it basically becomes biodegradable, some form of dirt when you finished with it, after that partial decomposing process that lasts 10 to 12 weeks?"

MILLS "Yes. You are right."

GAROFALO "Are there any other questions? Okay, thank you. We will bring it back to the Commission for a motion or discussion."

WHEELER "One more thing, for clarification. In the beginning, there was clarification by staff and the recommendation of this run-off. I guess I would like to know where the Planning staff is in terms of requiring that controlled run-off situation. Maybe I just misunderstood. Are you recommending that that occur or not occur?"

WARREN "It is in Item 'D'."

MILLER "Our original recommendation was that it would be whatever the Sedgwick County Department of Public Works or the Health Department, or whoever regulates that, that they would have to be in compliance with whatever the standard procedures are, but at Derby, they felt that they wanted to have a specific enclosed tank for this run-off to run into, so they made it more stringent."

WHEELER "So the regulations don't specifically require a tank, but there are regulations that control contamination."

MILLER "Susan may be able to speak to that better than I can."

GAROFALO "I think they do require a tank or a holding something or other."

SUSAN ERLLENWEIN "All of the transfer stations in the south-central area have enclosed tanks that wash water goes into instead of just ponding on the surface of the ground, and it seems appropriate to put it into a tank and not pond it."

WARREN "So when we make reference to a holding facility, then you are talking about a tank, aren't you?"

ERLENWEIN "Yes."

WARREN "You are not talking about a pond?"

ERLENWEIN "Correct."

WHEELER "So the Derby Planning Commission's request is in tandem with what you would require in terms of a County requirement?"

ERLENWEIN "That is correct."

KROUT "Wait. What Derby said was 'an enclosed tank is to be used to contain run-off'? I think they are talking about general run-off, not just the wash-off."

ERLENWEIN "At the meeting, they were referring to the wash-off from the transfer station. Anything that came into contact with the trash itself would go into a tank."

KROUT "Okay."

GAROFALO "This is a question for probably Dale. In the conditions here, or recommendations, that staff is making, Item A would have to be re-done or something, if we decided on this 12 acre thing, right?"

MILLER "Well, in Item A, we were asking that if this was approved, that he would submit a revised site plan that was more readable than the one we are working with now, that would clarify the 12 acres and in a general way indicate where each one of these activities is supposed to take place consistent with whatever gets approved."

GAROFALO "Should we not say in there '12 acres' if that is what we are about to approve?"

MILLER "Yes. Certainly. If that is your recommendation, you would want to include that or the maximum 500 tons per day, or however you want to do it."

WARREN "I am going to make a motion, but before I do, Dale, I understand that this is going to require two actions. One for the 'L' zoning on the entire tract, and the other for the transfer station?"

MILLER "Yes. You could separate them that way and take them separately."

GAROFALO "Let's do that."

WARREN "In reference to my motion, I would certainly give due respect to the two Derby Councilmen that are here. I might point out that the Derby Planning Commission voted unanimously for this, subject to the conditions that are established here. There is no way to tell, at this time, what the flavor of the Council would be, but it has had a lot of support in that area. Of course, I know that a lot of their concerns go back to things like the dumping that we see out on County roads and the dumping we see on the township roads, and the concern for that and the hope that this transfer station will alleviate some of those conditions.

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Land on all sides is zoned Rural Residential, residential (Derby) with a special use permit for a waste water treatment plant, or industrial (Derby). There are agricultural, landscape nursery, wastewater treatment plant, the Arkansas River and vacant land uses surrounding the site. The character of the area is a combination of undeveloped, agricultural and industrial uses. The suitability of the subject property for the uses to which it has been restricted. The property is zoned "RR", Rural Residential, and "GI", General Industrial with a Conditional Use permit for a landfill. The site is not suitable for residential for residential use given the fact that landfill operations have occurred on the site and due to its proximity to the wastewater treatment plant. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered by the river, creeks and other industrial or agricultural operations. The conditions attached to the approval of this request and the licensing minimize any detrimental effects. Length of time the property has remained vacant as zoned. The Rural Residential zoned property is currently vacant. The General Industrial zoned property has been used for landfill since 1986. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. However the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas. This site meets these requirements. Impact of the proposed development on community facilities: The site will generate little if any increased traffic over current operations and the

demand for municipal services (sewer / water) should be minimal if those services are required.) I move that we recommend to the governing body that the entire 70 acres be approved for 'LI' zoning, and the transfer station be approved, subject to the conditions as outlined and provided here by the County staff, and to include those conditions requested by the Derby Planning Commission, with those basic conditions being modified to change the word 'floodplain' where we say 'no composting permitted in the 100-year floodplain' to 'floodway'. Also that the size of the transfer station be limited to 12 acres and volume be limited to 500 tons per day.

WARREN made the motion.

JOHNSON "Would you consider also adding a clause that any debris, brush, etc., be out of the flood plain?"

WARREN "Well, I am not sure that that is really necessary. Based on what the experts here tell us, that isn't a real threat. As long as it is in the flood fringe, and I think they are synonymous."

JOHNSON "I am just talking about the brush itself, not the ground up stuff."

WARNER "Well, it only going to be there a week. I don't think I would make that a condition. I think by and large it will be, or at least it will be in the outer edge of it anyway. I don't know that that is a critical thing for us to worry about."

MILLER "For the sake of County Code Enforcement enforcing, would you include the requirement that they set posts and mark the difference between the floodway and the floodplain?"

WARREN "I don't have a problem with that. What kind of posts?"

MILLER "I was thinking 'T-posts' or some kind of wooden posts."

WARREN "That would outline the break between the floodplain and the floodway?"

MILLER "Yeah, because when an inspector goes out there and looks, he is not going to know."

WARREN "I would make that in the motion that that be outlined."

GAROFALO "We have a motion, do we have a second?"

HENTZEN seconded the motion.

PLATT "It seems to me in general, in looking at this, that this is the wrong place to collect trash, between a residential community and the Arkansas River. So to begin with, I am pretty skeptical about the whole thing as I look at it, but it seems to me that we could find a better place to put trash.

Now quite possibly, after we get more experienced with these transfer stations, which we haven't had any of, and I am certainly impressed by the pictures we have seen which have shown us some things about ones elsewhere that are really quite attractive. After we get more experienced, I might not feel this way. I might feel that this is a good location, simply because it is convenient. But at the present time, I move very cautiously in terms of how I want to approach locating them. It seems to me that among other things, our first applications ought to have been very specifically clear in detail laid out in terms of what was being proposed. What we see today I guess I would call a pretty 'loosey goosey' approach to things. The site plan that we looked at is not even a scribble. It is a very poor scribble at that. It reminds me of these applications we get from people who want to sell used cars, and we say 'fine, we will let you go three used cars, but you have to take the paint brush out and paint the parking spaces and label them for the used cars for sale'. Of course, they never do, and if you go in there and want to buy a used car, they will show you 17 used cars.

It seems to me that we are setting a very bad precedent if we start out or approach the transfer stations really sort of going along the same line. We say 'well, this looks like a pretty good idea and I don't want to draw a sharp line between the floodplain and the floodway, and after all, the trash is only going to be there for a while'. The more I listen, the more I begin to go back to my original contention that this is not the proper location for trash, so I am going to oppose the motion."

BARFIELD "Would you be interested in making a substitute motion?"

PLATT "No."

OSBORNE-HOWES "I don't think, at this point, I can support the motion as it was presented. At the very least, I would consider something that would certainly keep the brush out of the floodplain, and it may only be there a day or two, but if it is there on the day that the 100-year flood comes in, then you would have trouble. So, at the very least, I would only possibly support something that kept the brush out of the flood plain and markers delineating where the flood plain ended. So, I can't see supporting this motion."

JOHNSON "Susan, why don't you make a substitute motion."

OSBORNE-HOWES "You know, I don't care enough about it at this point to make a substitute motion. I am kind of wanting to see how other people feel. Part of me feels as Mr. Platt does, that it is a little 'loosey-goosey', and I would like to see a better site plan. I even thought about saying that we could ask them to come back with it in two weeks, but that is probably not there either. That is kind of where I am now."

JOHNSON "They still have to submit a different site plan, don't they?"

MILLER "That is Recommendation A."

MARNELL "Would the maker of the motion be willing to modify it to restrict the brush from the floodplain totally?"

WARREN "I would, because I think that is what it is going to take to get this through."

MARNELL "I wouldn't support the current motion, but I would support it if it said that."

REVISED MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Land on all sides is zoned Rural Residential, residential (Derby) with a special use permit for a waste water treatment plant, or industrial (Derby). There are agricultural, landscape nursery, wastewater treatment plant, the Arkansas River and vacant land uses surrounding the site. The character of the area is a combination of undeveloped, agricultural and industrial uses. The suitability of the subject property for the uses to which it has been restricted. The property is zoned "RR", Rural Residential, and "GI", General Industrial with a Conditional Use permit for a landfill. The site is not suitable for residential for residential use given the fact that landfill operations have occurred on the site and due to its proximity to the wastewater treatment plant. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered by the river, creeks and other industrial or agricultural operations. The conditions attached to the approval of this request and the licensing minimize any detrimental effects. Length of time the property has remained vacant as zoned. The Rural Residential zoned property is currently vacant. The General Industrial zoned property has been used for landfill since 1986. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. However the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas. This site meets these requirements. Impact of the proposed development on community facilities: The site will generate little if any increased traffic over current operations and the demand for municipal services (sewer / water) should be minimal if those services are required.) I move that we recommend to the governing body that the entire 70 acres be approved for 'LI' zoning, and the transfer station be approved, subject to the conditions as outlined and provided here by the County staff, and to include those conditions requested by the Derby Planning Commission and that the dumping of brush be restricted to an area that is identified and marked off that is located outside of the 100-year regulatory floodplain. The regulatory floodway shall be marked as directed by County Public works staff and subject to staff comments and Derby Planning Commission's comments, except for Derby's recommendation that no composting occur in the 100-year floodplain.

WARREN moved.

WHEELER "I have a couple of concerns. One is that I could not support storage of any brush within that area, and I have a little concern that we are not real definitive of what can and cannot occur in certain portions of one of these sites. I do think, up front, since we are just kind of entering this, I know that the County staff has given that a lot of thought, seen a lot of different situations and know far more about it than we do, and I am confident that they watch and monitor those. But I do think, going in, that we need to give some pretty specific consideration to how these are laid out and what potential expansions could occur because I know they may have some investment here."

The other part that is of a little concern to me, and I do understand trees, I want to see trees stay in place, and I think that buffering to the people that are going to live right next door to this is very critical. To say to leave existing trees sounds real good because I drove past there and there are a lot of trees, but without establishing with the zoning, which we typically do, some kind of footage of barriers, we are going to zone that whole property to a different use. Like I said, I would feel much more comfortable in defining some parameters because if they do raise some of that a foot, they could go in there and build other structures. Today that is not what we are talking about doing, but once that zoning is in place, I think we owe it to the neighbors that are there as well as K-15 as a visual corridor for trafficking, and I would just feel more comfortable if that could be defined in some way that they are not going to cut down trees. Some trees could die; I know how those things go. And typically with zoning cases, if we do want to buffer residential, we set some, and I know that the zoning does require some buffering, but I would feel more comfortable if we had a definitive protection there."

CARRAHER "I have a point of order or clarification. Commissioner Marnell made a friendly amendment, which was made by the motion-maker. We need to see, for the sake of procedure, if the second concurs."

HENTZEN seconded the motion.

OSBORNE-HOWES "Ms. Wheeler, I am kind of where you are. Are you suggesting maybe a postponement?"

WHEELER "I don't know. Maybe someone who is familiar with where do those trees lie, and that could just be defined as so many feet or something. I think, for my personal comfort level, I would feel more comfortable if there is some way, and I don't know whether it has to be feet. Maybe staff could make a recommendation there. I am not trying to box them in or stop this from occurring, but I just think a reasonable judgement might be able to define that in some way."

WARREN "Are you thinking about maybe 200 yards from the property line that they wouldn't have any activity? Right now, there is quite a buffer in there. A spring runs through there and it is pretty wide from where the property line lies to any residence. And of course, as far as location is concerned, it has been suggested that it is up against residential, and that is true, and I am very sensitive to that, to these two people, but by and large, it is bordered by K-15, a sewer plant, and a river. In fact you can't even see down in there. I have no problem and I don't think the applicant would even have problem with a 100-yard buffer, or something like that, along that property line that borders residential. If that is what it takes. I would like to see us go ahead and see a delayed action until you get a site plan that satisfies."

KROUT "Jim Weber has a drawing, and it might be helpful for him to circulate it, and if you look at the map where it reads 'spring', that area that is marked white and has a line along it is the 100 year floodway. That is also where the bulk of the trees are located. His suggestion is that if you use that line, that floodway line as the boundary for the 'LI' Limited Industrial in the area to the east and south of that residential, that that would go further in terms of protecting that."

WHEELER "They could not build in that area anyway, correct?"

KROUT "That's right. That is part of what he is saying, that they really won't be able to build in that area because it is the regulatory flood way anyway, but it could also, just in terms of clarifying for everybody what you could do and not do, it would probably make sense to stop the 'LI' line at that location and it would be clear that the intent was for it to be a buffer area to the south."

GAROFALO "Do we have a slide where that could be pointed out? I am looking at this thing, and I can't really quite follow it."

WARREN "So what you are saying is that all of the white area is floodway?"

WHEELER "That is where the trees predominantly stand, I guess. I am not sure where the trees are or aren't."

KROUT "Could you pass that map around, Jim?"

GAROFALO "Jim, could you point it out up there, too?"

WEBER "What you can see on this aerial photo is that we have some of this highlighted in yellow. Essentially, it is a strip that covers the trees down in here, and back up into this area. We are talking about the regulatory floodway being on the Arkansas River, but there is also one on Spring Creek that comes up through here. There are a few feet in here (indicating) that that angle wouldn't cover, but it covers the creek in here and moves back around to the Arkansas."

WHEELER "So that would cover the bulk of the screening? Okay. But the fact that they couldn't build on that property anyway even if we didn't..."

WEBER "Well, you never say never, but it probably not."

WHEELER "Well, that was my question, that it was protected in some way."

WARREN "Mr. Chair, there has been a little confab over here. I would like to modify my motion further."

RE-REVISED MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Land on all sides is zoned Rural Residential, residential (Derby) with a special use permit for a waste water treatment plant, or industrial (Derby). There are agricultural, landscape nursery, wastewater treatment plant, the Arkansas River and vacant land uses surrounding the site. The character of the area is a combination of undeveloped, agricultural and industrial uses. The suitability of the subject property for the uses to which it has been restricted. The property is zoned "RR", Rural Residential, and "GI", General Industrial with a Conditional Use permit for a landfill. The site is not suitable for residential for residential use given the fact that landfill operations have occurred on the site and due to its proximity to the wastewater treatment plant. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered by the river, creeks and other industrial or agricultural operations. The conditions attached to the approval of this request and the licensing minimize any detrimental effects.

Length of time the property has remained vacant as zoned. The Rural Residential zoned property is currently vacant. The General Industrial zoned property has been used for landfill since 1986. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. However the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas. This site meets these requirements. Impact of the proposed development on community facilities: The site will generate little if any increased traffic over current operations and the demand for municipal services (sewer / water) should be minimal if those services are required.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The Conditional Use Permit for the transfer station shall apply to the northernmost location and that a legal description describing that location be provided prior to hearing by the governing body. Prior to this request being forwarded to the governing body, the applicant shall submit: a revised site plan that depicts the location of the transfer station and provides more building detail (e.g. size and location of openings on the tipping floor enclosure, public education area), screening plan, general location for each activity and clarification of what is to happen on the eastern portion of the property not included in the site plan.
2. The Conditional Use for the establishment of a solid waste transfer station shall be subject to all applicable local, state and federal regulations and laws, and prior to beginning operations, all applicable local, state and federal permits shall be acquired.
3. The use of the site as a solid waste transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit. The tipping floor area shall be completely enclosed except for openings with operable doors for loading / unloading and pedestrian / emergency doors.
4. At the time of platting, the applicant shall submit a drainage plan to the Health Department and to the Sedgwick County Department of Public Works (Derby) for approval. All runoff within the tipping facility shall drain to a holding facility. All outside runoff shall be properly confined, filtered, and/or treated to prevent contamination, as deemed appropriate by the County (Derby).
5. A landscape plan shall be submitted to the Planning Director for approval prior to issuance of a building permit, indicating the number, location, size and type of plantings and method of watering. Landscaping shall be installed in conformance with this plan prior to operation of the facility and maintained in conformance with the plan.
6. Temporary outside waste storage of materials shall be stored or confined in a manner that prevents waste from being blown beyond the site.
8. Outside building walls and roof surfaces shall be predominantly muted in color intensity, with bright white colors limited to a maximum of 10 percent of the total surface area.
8. No off-site signs are permitted on the property. Building signs shall be limited to a maximum of 10 percent of any wall surface.
9. Violation of any of the conditions of approval shall render the Conditional Use null and void.
10. Approve Limited Industrial zoning for the area outside the regulatory floodway; that the dumping of brush be restricted to an area that is identified and marked off and which is located outside of the 100 year regulatory flood plain; the regulatory floodway shall be marked as directed by County Public Works staff; and subject to staff comments and Derby's comments, except for Derby's recommendation that no composting occur in the 100 year flood plain.

WARREN moved, **HENTZEN** seconded the motion.

WARREN "I would like to ask the applicant if these things are things he can live with."

MILLS "We don't have a problem with them."

MOTION: That the question be called.

CARRAHER moved, **JOHNSON** seconded the motion, and it carried unanimously.

VOTE ON THE RE-REVISED MOTION: The motion carried with 9 votes in favor (Marnell, Wheeler, Johnson, Warren, Carraher, Garofalo, Barfield, Osborne-Howes and Hentzen) and 1 in opposition (Platt).

KROUT "This will go next to the County Commission. If you spoke at this meeting, you will receive a courtesy notice. Because the Derby Planning Commission clearly did say that they didn't want composting in the floodplain, there still is a difference here because the applicant has said that the Derby Planning Commission would put him out of business with their recommendation. There is a significant difference between the two, so it will take a unanimous vote of the County Commission to override their recommendation and approve it as recommended by the Planning Commission."

WARREN "Marvin, is there any way that this could go back and Derby could re-identify their position, prior to the vote by the County Commission?"

KROUT "Yes, we can talk to the County Counselor about how to do that."

WARREN "The second thing is that I would like to have a copy of that motion that we could give to the Derby Planning Commission."

6a. Case No. SCZ-0797 - John Dugan (Owner/applicant) and Tim Austin, Austin Miller, PA (agent) request to rezone property from "SF-20" to "LC" Limited Commercial and "GO" General Office; and

6b. Case No. DP-251 - John Dugan (Owner/applicant) and Tim Austin, Austin Miller, PA (agent) request the creation of Ubiquity Community Unit Plan on property described as:

A tract of land beginning at the Southeast corner of the Southeast Quarter of Section 36, Township 26 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence North 905 feet; thence West parallel with the South line of said Southeast Quarter, 1203.32 feet; thence South 905 feet; thence East 1203.32 feet to the place of beginning; EXCEPT the South 50 feet and East 50 feet thereof dedicated for road purposes. Generally located on the northwest corner of 29th Street West and 119th Street West.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting to rezone a 21.82 acre unplatted tract from "SF-20" Single Family Residential to "LC" Limited Commercial and "GO" General Office and the creation of the Ubiquity Community Unit Plan located at the northwest corner of 29th Street North and 119th Street West. The site is currently the Coleman Employees' Recreational Facility. As shown on the site plan (attached), the applicant is proposing to split this property into two parcels and one reserve. Parcel 1 (8.73 acres) would be located on the west side of the application area and is proposed for "GO" zoning. Parcel 2 (13.09 acres) would be located on the east side of the application area and is proposed for "LC" zoning. The reserve would be located along the north property line at the site of an existing pond and would be used for drainage and detention purposes.

Parcel 1 is proposed for all uses permitted in the "GO" district except: Correctional Placement Residences, Limited; Correctional Placement Residences, General; Group Home, Limited, General, and Commercial; Recycling Collection Stations; Asphalt or Concrete, Limited; Manufacturing, Limited; Mining or Quarrying; Oil or Gas Drilling; Rock Crushing; Solid Waste Incinerator, and all "Industrial" uses. Parcel 2 is proposed for all "Commercial" uses permitted in the "LC" district. The applicant is also proposing to limit signs to 20 feet in height and be monument type. The proposed signage would be 300 square feet in up to 2 signs on the 29th Street North frontage of Parcel 1 and 300 square feet in up to 3 signs on *both* the 29th Street North and 119th Street West frontage of Parcel 2. A six-foot masonry wall is proposed along the property lines of the C.U.P. where adjacent to residential zoning except for along the reserve area. The proposed access controls do not conform with more recent standards for CUPs because they do not provide for complete access control within 100 feet of the arterial intersection.

Undeveloped land located to the south and east of the site is zoned "SF-20" and is used for agriculture. The property to the north of the site is zoned "SF-20" and is used for large-lot residential development. The property to the west of the site is developed with single family residences and is zoned "SF-20" and platted as the Balmoral Briar Addition and the Creekside Estates Addition. The single-family residences to the north and west are immediately adjacent to the site. The applicant also owns the property on the southeast corner of 29th Street North and 119th Street West, and this property has been approved (subject to pending platting) for "LC" (10.1 acres) and "NR" (1.9 acres) zoning and the Westridge CUP.

This case was deferred from December 16, 2000. The applicant requested the deferral to discuss with planning staff the possibility of changing some of the recommended conditions of approval. Specifically, the applicant requested: (1) an increase in floor area ratio to 35%, (2) a reduction in the number of lanes of guaranteed off-site improvements for 29th Street North, (3) the base height restrictions of the "GO" General Office district for Parcel 1 because of the potential for multifamily use on this parcel, and (4) "LC" Limited Commercial zoning for all of Parcel 2. Planning staff concurred only with the request for an increase in floor area ratio, and that change is reflected in the recommended conditions of approval below. Planning staff is willing to support some slight modification to the recommended height restrictions on Parcel 1, but does not support the base height restrictions of the "GO" district as the applicant has requested.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" Single family residences on large lots
SOUTH: "SF-20" Undeveloped agricultural land
EAST: "SF-20" Undeveloped agricultural land
WEST: "SF-20" Single family residences on platted lots

PUBLIC SERVICES: There are no current traffic volumes available for either 29th Street North or 119th Street West. Both section line roads are two-lane with 29th Street North having sand or gravel paving and 119th Street North having asphalt paving. The County Capital Improvement Program shows reconstruction of 119th Street North from 21st Street North to 53rd Street North in 2002. Municipal services are not available to serve this site. The development of this property will be contingent on municipal services being provided to this site.

CONFORMANCE TO PLANS/POLICIES: This area is classified by the Wichita Land Use Guide of the Comprehensive Plan as appropriate for "Suburban" (1 acre minimum lot size) development; however, the update for the Plan, now in progress, shows this area as appropriate for urbanization in the next 10 years. The Comprehensive Plan recognizes that new growth will require the development of additional commercial areas to meet the convenience and shopping needs of new residents. The Land Use Guide indicates that arterial intersections like this should be expected to accommodate retail commercial development.

The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

This site is not within the West Side Commercial Development Policy area, but this CUP does include a number of the appearance standards found within the Policy, although it significantly exceeds the size permitted by that policy.

RECOMMENDATION: The site is similar and has the same owner as the Westridge CUP on the southeast corner of 29th Street North and 119th Street West; therefore, planning staff recommends that this CUP be held to those same development standards. The conditions listed below were conditions of approval for the Westridge CUP. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year and the following conditions:

1. Prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Director of Planning. This walk system shall link sidewalks along 29th Street North and 119th Street North with proposed buildings within the subject property as determined necessary by the Director of Planning.
2. Parcel 1 and 2 shall be limited to a maximum building coverage of 30 percent, per Section III.C.2.b. (2). (b). of the Unified Zoning Code. Parcel 1 and 2 shall also be limited to a maximum floor area of 35 percent.
3. The following uses shall be prohibited from all parcels in the CUP: adult entertainment establishments, group homes, group residences, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment.
4. The development of this property shall only be permitted if public water and sewer services are provided.
5. At the time of platting, the applicant shall guarantee off-site street improvements. These improvements are anticipated to include the construction of two lanes of roadway along 29th Street North along the property frontage and left turn lanes at the intersection 29th Street North and 119th Street West. The applicant shall guarantee 1/8 the cost of signalizing the intersection of 29th Street North and 119th Street West. The applicant shall also guarantee the construction of an accel/decel lane along the entire 29th Street North and 119th Street West frontage.
6. All parcels approved for "GO" uses, shall comply with all of the City of Wichita sign code requirements for development in the "GO" district. All signs shall be spaced 150 feet apart on both parcels. Window display signs shall be limited to 25 percent of the window area. No signs shall be permitted on the rear of any building facing north or west within 200 feet of the north and west boundaries of the CUP.
7. Hotel or motel uses shall not be permitted on Parcel 1.
8. Buildings in Parcel 1 shall be limited to a height of 1 story within 200 feet of the north and west boundaries of the CUP.
9. The north 250 feet of Parcel 2 east of the reserve shall be zoned "GO" General Office and shall be limited to a building height of 1 story.
10. General Provision #1A shall be clarified that it refers to 35 foot building setbacks.
11. At the time of platting, the applicant shall guarantee the required drainage improvements.
12. Complete access control shall be provided along the first 150 feet from the intersection of 29th Street North and 119th Street West, and any openings in the first 250 feet from the intersection shall be restricted by design to right turn in-out only.

13. General Provision #9 shall be modified to require similar/consistent parking lot lighting elements, light poles limited to 24 feet in height, and a prohibition on extended use of backlit canopies and neon lighting.
14. General Provision #9B shall be modified to remove the provision for allowing further division of parcels without adjustment to the CUP.
15. General Provision #10 shall be modified to require screening of loading docks and services from *all* residential areas.
16. General Provision #11 shall be modified to require a financial guarantee for plant material approved on the landscape plan for that portion of the CUP being developed prior to the issuance of any occupancy permit, if the required landscaping has not been planted.
17. General Provision #14 shall be modified to require building exteriors to share uniform architectural character, to be predominantly earth-tone colors with vivid colors limited to incidental accent, and to use materials similar to surrounding residential areas.
18. General Provision #15 shall be modified to require the 6-foot masonry wall to be constructed with a pattern and color that is consistent with the buildings on the site.
19. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
20. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
21. Prior to publishing the resolution or ordinance establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-251) includes special conditions for development on this property.
22. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is undeveloped agricultural land located south and east of this site. Residential properties on large lots are located north and west of the site. All property in the area is currently zoned "SF-20." However, the request is consistent with the historic pattern of zoning and development inside the city and is consistent with the approved (subject to pending platting) Westridge CUP at the southeast corner of 29th Street North and 119th Street West.
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned residential and could be developed as such, once sewer and water was available to serve this property.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions imposed upon the applicant, including the screening wall and the limitation on the proposed uses, should alleviate any potential impacts on the surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Suburban" development. The Comprehensive Plan recognizes that new growth will require the development of additional commercial areas to meet the convenience and shopping needs of new residents. The Land Use Guide indicates that arterial intersections like this should be expected to accommodate retail commercial development.
5. Impact of the proposed development on community facilities: This application could significantly increase the traffic on the two roads which serve this site. However, it is unlikely that this site will develop for a number of years, and through the required improvements to the roadway system this impact should be reduced.

KNEBEL "This case was originally scheduled for the Planning Commission on December 16, 1999. At that time the applicant requested deferral in order to speak with the Planning staff to see if we would change some of the recommendations in the staff report at that time. Specifically, the applicant has requested that the floor area ratio be increased from 30% to 35%. The applicant requested a reduction in the number of lanes of guaranteed off-site improvements for 29th Street as requested that the base height restrictions for the General Office district be applied to Parcel 1 in order to allow for potential multi-family use, and that the staff recommendation to limit the northern portion of Parcel 2 to the east of the detention pond to General Office be removed and that the whole Parcel 2 be allowed to be Limited Commercial.

Of those requests, the Planning staff accepted the increase in the floor area ratio to 35%, and that is reflected in the revised conditions in your staff report. We were also open to some slight modification to the height restrictions that we recommended for Parcel 1; however, we were not willing to accept the applicant's request for the base height restrictions of the 'GO' district.

This area is located in an area classified as suburban in the current Comprehensive Plan; however, in the update on the Comprehensive Plan, which is being considered currently, the area shown is appropriate for urbanization within the next 10 years and is also identified as a site that is possible for future commercial development. This site on the northwest corner has the same owner and is similar to development proposal as what was recently approved here on the southeast corner of this intersection. Therefore, Planning staff is recommending that these two developments be held to the same standards. The staff is recommending approval, subject to platting and to a number of conditions. I will be available to answer any questions."

WARREN "That item 1, a pedestrian walk system linking the building to the street. What do you mean by that?"

KNEBEL "In the future, we can envision that 29th Street and 119th Street will be urban arterials and we will have walks along them. What we are interested in is designing some way in that the walks that are internal to the system here connect to the walks along the arterial streets and provide a way for people who are living here and perhaps here and other residential areas can walk from their residences on sidewalks into the shops rather than having to walk through parking lots. Basically to have some sort of walk system integrated into the parking lot scheme so that there are walks that go from the developed buildings, through the parking lots to the arterial sidewalks."

WARREN "You think that they will use those sidewalks in lieu of the parking lot?"

KNEBEL "Obviously, the majority of the people are going to drive to this site, but those who do walk would use this system. It is the same system that is recommended for the site on the southeast corner as well. Marvin, do you have anything to add to that?"

WARREN "I question running a concrete sidewalk right along the parking lot."

KROUT "In some cases, it may be a striped area, a marked and designated striped area across a parking lot. In other cases, it may be a small concrete walk that is, say, along the edge of the major driveway into an interior walk."

WARREN "So a walk system, in your opinion, isn't necessarily a separate hiking/biking type walk."

KROUT "Not necessarily."

GAROFALO "Are there any other questions? Thanks. All right. We will hear from the applicant."

TIM AUSTIN "I am with Austin Miller, as agent for the applicant. Scott mentioned, I think, for the most part, with the 18 or so conditions, we are pretty much in agreement. So, I would like to just comment on the things that we have a little difference of opinion on.

On Item No. 3, as far as prohibited uses, most of those are okay. I think we would encourage any of them. One that we would like to remove would be group residences. We would like to retain that right on Parcel 1. Mr. Dugan has been talking with the Catholic Diocese and would like to retain the ability for the nuns to have a place there. I think that would fall under group residences.

We would like to keep the right for a drive-through or fast food restaurant. We would, in acknowledge of Item No. 9, and I will get to that in a minute, would agree to restrict drive-through restaurants from the north 250 feet of Parcel 2. On Item No. 5, staff is requesting that we guarantee two lanes of roadway along 29th Street plus a right-turn lane, plus left-turn lanes. Mr. Dugan doesn't want to agree to that. He does agree, as a compromise for one lane, half of the left-turn lane because the belief is that this property to the southwest corner of the intersection would also probably go commercial, and they should share in that cost ultimately. On the continuous accel/decel lane, I think in the past, the way Traffic Engineering has been doing those is to guarantee lanes for turns at the driveway location as opposed to the entire frontage. So we would agree to accel/decel lanes at the driveway locations as opposed to the entire frontage.

On Item No. 8, the limitation of one story within 200 feet of the north and west boundaries, we don't feel like we could do that. Under the Zoning Code, the 'GO' District allows buildings to be up to 60 feet in height, and we could probably compromise on that and go to 45 feet in height.

And last, on Item No. 9, on what could be a parcel on the north 250 feet of Parcel 2 there east of the drainage reserve, we would like to retail that as 'LC', but again, if we could eliminate some of what is normally seen as the more nuance-type uses of 'LC' and we would be agreeable to eliminate a convenience store from the north 250 feet there, and a drive-through, as I mentioned earlier, or anything with outdoor speakers.

Part of this, the scale of this aerial, I don't know if it allows you to see this. Most of these lots, I believe, are 296 feet in depth, and in most of these homes that are here, there is at least 200 feet separation. These are maybe just a little bit closer; I didn't get out and measure them. There is, as the photos show, an old hedgerow here that is a pretty good buffer already, and I think these are red cedars here which are a shelterbelt, and those are a good buffer. If it would be helpful, we could probably put a 20-foot landscape buffer along the north and the west to try to maintain those hedgerows as well, allowing part of the use. With that, I will be happy to answer any questions."

WARREN "In Item No. 5, do I understand that requirement, that you would actually improve 29th Street and 119th Street, knowing that those are going to be major arterials? Is that what the request is here?"

AUSTIN "As I understand it, we, on 29th Street, would essentially guarantee four lanes of pavement on 29th. If it was improved today, it would probably be a two-lane roadway. So that property would probably be assessed the frontage for one lane. We feel that would be reasonable as it exists today. As far as when the development, if it ever comes about in the next 5 to 6 years, it would be reasonable as in the past, to ask for turn lanes and participate in that cost, but we just feel that it is a little bit unreasonable to ask for two full lanes."

WARREN "So you would be willing to come into agreement with some kind of a contingent petition for one lane to be on benefit district?"

AUSTIN "Right. And normally we take care of that at the time of platting. It would be one lane. Generally, when we plat, even though it states here that the improvements are anticipated at the time of platting, normally at the platting stage, we pretty well live by what was done at the zoning."

WARREN "On Item No. 13, notice the prohibition there on the use of backlit canopies and neon lighting. Marvin, do we require that in most cases? Because these backlit canopies have got to be quite an architectural part of structures now. Actually, they add to, I think. I have particularly seen some old buildings and when they put those canopies on, they started looking pretty good."

KROUT "That particular limitation is one that we have applied consistently in what is called the Far West Wichita area, south of 21st Street and west of 119th Street. We haven't applied it in all CUPs, or even most CUPs outside of that defined area where there was a policy that was established. But we thought that in this particular area, because this area is surrounded by large lots, low density areas, we thought that to try to preserve the residential character of and the low density nature of this area, that it would be appropriate to try to limit the more gaudy types of architectural treatments."

Tim, you know that we have a policy for all subdivisions to provide paved access to the nearest access point, and in commercial, we have always to get it paved. In one or two cases, we have said that if there wasn't paving, then there would be no access along that street. I agree with you that when the southwest corner comes in and we expect it will come in some day, and there will be a request for commercial, and if it was approved, then we would do the same thing to them and we would revise your petition so that you would each be responsible for half of the construction, but we don't know if or when that is going to happen, so we thought if there is going to be access to 29th Street, then you ought to provide paved access along 29th Street to your subdivision. Would you agree, if you are only willing to give us a petition for half of the road until the road was constructed to its full width that there would not be any access to 29th Street, but only to 119th Street?"

AUSTIN "No, I don't think so. And I don't know how you get around that dilemma about this one maybe coming in ahead of that other one. If there was some comfort level and some assurances that if we petitioned both lanes and that there was some assurance that when the southwest corner came in and was developed or platted that the petition would be revised, as you suggested, I would think that that would be a better way to go, but I am not sure."

If the petition was called in and the two lanes were paved, does this property owner get reimbursed his cost for that second lane of paving? I just don't see how you get around that."

KROUT "And my other question is, haven't we been pretty consistent about requiring the continuous decel around the corner parcel at the intersections?"

AUSTIN "Kind of yes and no. What we did at 37th and Ridge, for instance, what we did on the southwest corner, and what Baughman did on the northwest corner, I think was just the accel/decel lanes at the driveways. That is what I recall. I don't know that we guaranteed a decel around the corner, but I may be wrong on that. I think in a lot of the discussions with traffic engineering, it was that they have gotten away from that continuous lane and are looking for just a turn lane to turn in there. That is pretty much the way we have been designing them on the engineering side of things."

WARREN "Tim, does that eighth cost you the stoplight out there?"

AUSTIN "I don't think we have a problem with that. It seems to have become kind of an informal policy at this point, with the developments. Without a doubt, this land would generate some traffic and would contribute to a traffic problem there. I think an eighth, in lieu of some type of some type of comprehensive study in that whole area, would be fairly representative."

GAROFALO "Are there any other questions? Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition?"

DENNIS LEIERER "Hi everybody. I live in the Creekside addition at 3212 North 124th Street. That area has built up in the last three years. We have been there about three years. In fact, if I may show you, (indicating) this whole area is full of houses now. It is not just this older section down here, but at last count there were 15 or 16 houses, including my own."

WARREN "Would you point out your house on the map?"

LEIERER "Sure. These two larger houses here are kind of the dividing line. We are the second lot right here north of the last house that is shown here on the picture. There are several houses along here, including a cul-de-sac right across here now. It is full with houses on both sides. Like I said, I think it is 15 or 16 houses in there now, and there are some more under construction.

I wasn't really planning to complain as much today as I was just to ask some questions. I do think you for the letter that the other homeowners' got as well as I, I assume. We were just concerned about what general plan or vision was for this area. I don't think I or any of my neighbors are opposed to expansion or to growth, but when we bought our home, we thought that the worst we would have to contend with was just more houses. I am just here, I guess to ask a question regarding what the plan is for that corner there. Of course, the old Coleman Club has been in disrepair for a while. It is actually turning into an eyesore, so a change there probably wouldn't be bad. Our only concerns were the additional levels of light and noise and traffic in and around that area. I am envisioning that this could be something, either a strip mall or a new Dillons or something like that. I think I did hear a rumor to that effect.

But we would certainly be in favor of limiting some of the lighting. You mentioned trying to preserve the look of the neighborhood. All of the houses around there are either on one acre or greater lots. My particular one is on just a one acre, but all of the houses around there to the south, I would guess, are two or three. There are some two and three acre lots that aren't built upon on that curve and cul-de-sac there on the north portion. Anyway, I guess I would just ask, while I am here, if there is any way to minimize the light and the noise, and of course we have the luxury now of living out here in the edge of the boonies here and it certainly is nice of an evening. I think that is a luxury at this point, and we understand that progress is going to happen. But can you elaborate, anyone, has there been any discussion of what the plan is for the next few years for not only this parcel, but maybe what the ten year plan might be for 119th Street up and down? That is the extent of my question, if you could share any information."

GAROFALO (Indicating) "Sir, have you picked up one of these?"

LEIERER "Yes, and I did read some the detail there. These are general comments, are there any specifics?"

GAROFALO "Well, under the conditions, for example, No. 3, it shows what would be prohibited if this is adopted."

LEIERER "Right. I understand. I do appreciate knowing what may be prohibited, but I was more in question of what might end up being there that would not be prohibited. I wondered what the plan was, and Mr. Miller might be able to answer that. Just a general vision of what that area might be in the next few years. Of course, I might mention that 119 is awfully busy now. It is great that it is paved, but there is a lot of high school traffic going up north to Maize, so it is kind of hard to get out there, so a stop light there would be a big benefit someday."

HENTZEN "Is your house in the City or the County?"

LEIERER "It is in the County. As I understand it, the City/County border is about half a mile south of us. We have watched the Aberdeen area that was previously mentioned grow gradually to the south, and we know that there are a lot of houses going in over there, which is fine."

HENTZEN "At this time would you oppose annexation?"

LEIERER "I can't really speak for my neighbors. I don't think we would oppose it. We know that eventually, and we did get the new sewer plant about a mile and a half north, and there are still myself and several neighbors not too happy about that.

As a matter of fact, when we were building our house, we thought we were going to have to have propane, and in the time that I asked the question to the time the contractor was able to get me an answer, we had a gas line in our front yard. That was fine, and I know that we will eventually get sewer and water as well. Everybody out there is on a well now, but no, I don't think anybody will be opposed to annexation. I think we all know that it will happen eventually."

HENTZEN "I can't tell you the exact plan, but I can tell you that the land east of there is considered for a new Catholic parish. If you know what happens when those are built, that is what is going to happen there. As to when, I have no idea, but I do know that there is some area being considered for the next parish there."

LEIERER "And that would be on the east side of 119th?"

HENTZEN "Yes, sir."

LEIERER "Very good."

HENTZEN "Now 119th is now paved all the way to 53rd Street, and the school buses use that to the Maize school district. It is paved only to county standards, not curb and gutter. I think the Transportation Plan will address that because it needs it. Now, 29th Street runs in place of it, and for the benefit of everybody else, is a sand road, has no pavement."

LEIERER "And some of the worst roads, if I may add. After a rainy day it is awfully muddy."

HENTZEN "Well, you got a new bridge out there west. They put a new bridge over the Cowskin and the County accepted the contract one day and the contractor was done, and then the next day, the bridge washed away...on Halloween night. The whole cotton' picken' thing had to be replaced."

LEIERER "Right. I remember that. Anyway, are there any other conversations that may have been held with future plans? I am just looking for something general. I do appreciate the info about the Catholic Church. Is there anything else?"

OSBORNE-HOWES "I am curious as to whether the applicant or the agent had made any attempt to visit with you or your neighbors to share this plan with you?"

LEIERER "No, I didn't know about the rezoning request until we got the letter from the Planning Commission."

KROUT "And the applicant's agent may want to respond also in his rebuttal, but generally speaking, when people come in and ask for rezoning a property in the stage of development that this property is, it is usually because they want to get their zoning before too many more of your neighbors join you, and they have a more difficult time getting their zoning. So it also means that this may well be 3, 5 or 7 years away from anything developing because you need more residential to support commercial development, which is what they are asking for. I don't think they have any specific plans for this property except for maybe a portion of it to be used as a group residence, as you heard the agent saying, and that is because the owner, I guess, has some ties with the church. But probably those are kind of long-range. That is fairly typical that we have people coming in who aren't necessarily developing and don't have a specific development plan, who just want to be able to try to assure that they have commercial type uses of property."

We try, to the best of our ability to determine what are the appropriate limitations and that will carry case-by-case, depending on the circumstances of what is around it. There is a general picture, from what we expect to happen in this area, and that is what is called the Comprehensive Plan. Because of the expansion that the sewer plant is expected to provide in terms of sewer capacity, we expect this whole area to urbanize, and rapidly. This is where 60% of all building permits in the past have been established. When that plant is built and there is sewer and water both available, then you can expect to see continued development to the north and to the west like you see to the south and east today.

You can expect most major intersections, even though this doesn't look major to you now, this is an arterial intersection, so it may not be the scale of 21st and Maize Road in terms of the amount of commercial, but you could expect similar uses and similar kinds of development as you see it at intersections like that."

LEIERER "I appreciate that. I know when we were first looking at the property, I came up here and was able to get with the Water and Sewer Department, and at that time, there was a discussion about the Northwest Expressway, so I was interested in where that might fall. I haven't heard too much about that lately, but I know that that is going to be a possibility. But I was able to look at a 25 year plan map for potential annexation, and actually kind of, and I guess it is just kind of an expectation of where the annexation would be and just to see how that north and west growth was going to be. It was interesting."

KROUT "The expectation is that the City will probably some day be interested in annexing them in subdivision."

GAROFALO "Are there any other questions?"

WARREN "Not of him. I have one though. Is 119th Street, going south, is it already dedicated?"

KROUT "Yes. I am not sure why it looks like, on the aerial that it isn't there, but it is there."

KNEBEL "It is there and it is paved."

GAROFALO "Is there anyone else here to speak in opposition to this application? If not, Tim, you will have two minutes for rebuttal."

AUSTIN "I don't have anything further unless somebody needs some clarification on some of the things that I have pointed out before."

GAROFALO "You don't have any other response?"

AUSTIN "I can get with him afterwards and talk about some of his general questions."

WARREN "Tim, are you in a position now to even speculate as to when this development might take place?"

AUSTIN "No, I'm not. Probably the biggest hindrance is going to be sewer. They are still studying that area."

GAROFALO "Maybe I ought to ask you to just review for us again on the conditions here, just a recap."

AUSTIN "Okay. On Item No. 3, we agree with staff's conditions, except for group residences, and for restaurants, we would like to retain the drive-through, except on the north 250 feet of Parcel 2."

HENTZEN "Are you still talking about No. 3?"

AUSTIN "Yes."

WARREN "I can't see where you're limited to that on No. 3."

AUSTIN "Huh? It does approve? Okay, I see that. I will go ahead and offer that."

On Item No. 5, in the second sentence where it talks about construction of two lanes, we are at one lane. In the third line, where it talks about a left-turn lane, we would do half of a turn lane. And then, on the last sentence, the accel/decel along the entire frontage, just to clarify what I mentioned to Marvin earlier, I do have the Star West CUP that I still have from it was heard that last time, and the language was continuous from the intersection to the major entrances. I think we could agree to that. I just need to revise the access and define where we are going to have major entrances into the shopping center. I think we can do that."

KROUT "That would be fine."

AUSTIN "And then on No. 8, we would agree to a 45 foot height limitation on the west 200 and the north 200 feet of Parcel No. 1."

And lastly, on No. 9, restrict uses on that north 250 feet of Parcel No. 2 to no convenience stores or fast food restaurants or outdoor speakers."

WARREN "Would Neighborhood Retail do the same thing?"

AUSTIN "No."

HENTZEN "On No. 9 and 9, did you say the north 200 feet or the north 250 feet as written there?"

AUSTIN "The north 250 feet."

HENTZEN "That is to be zoned "GO" General Office?"

AUSTIN "No, it would be zoned Limited Commercial with a prohibition of convenience stores, fast food and we would add the prohibition against the use of outdoor speakers on that same 250 feet."

HENTZEN "Okay."

AUSTIN "Oh, and Scott just mentioned that there is a height restriction, and to be honest I didn't realize that that was in there. We wouldn't agree to that because the 'LC' is already 35 feet. Well, that is because you were recommending 'GO', which had the 60 feet, so that kind of goes away."

OSBORNE-HOWES "Tim, didn't you also offer a 20-foot landscape buffer?"

AUSTIN "Yes. And then the very last thing would be a 20-foot landscape buffer along the north and west."

HENTZEN "What item is that?"

AUSTIN "I will just put that in with item No. 9."

HENTZEN "On Item No. 9, a 20-foot landscape buffer."

WARREN "And that is on the west and north."

AUSTIN "Right. That would be basically to protect the integrity of the existing hedgerow that is here in the cedar row. That is on the north and west of the entire CUP."

HENTZEN "Okay. Those existing buildings there, the building that were there for the Coleman Club, is there a 20 foot there?"

AUSTIN "I believe so, based on our survey, but let me just double check. Yes."

GAROFALO "Are there any other questions? I guess I would just ask staff to respond to Tim's suggestions, or requests."

KNEBEL "The group residences requested on Parcel 1, those were inserted in order to be consistent with the Westridge CUP, which is on the southeast corner of this site. The applicant actually submitted it with many of the other uses other than the group residence to be prohibited. As far as how those are developed, there is not a whole lot of difference between that and a large, multi-family development, which would be permitted in the General Office district."

Like Marvin mentioned on the street improvements, it does seem kind of difficult to allow this development to occur with just one lane of paving on 29th Street. You do need to somehow get that paving in there and as far as the accel/decel lanes going to the entrance, that seems reasonable to me. Of course, all of this is going to be hashed out at the time of platting. This just would give some guidance to that."

On Item No. 8 now, the height restriction on the Westridge CUP on the southeast corner to which we are trying to hold this development to the same standards as 35 feet on all parcels. He is requesting 45 feet on the west and north 200 feet and then you would have a 60-foot height restriction on the rest of the General Office parcel there, based upon what he is asking. Forty-five feet and the difference between one story is probably not all that great. You are talking a height of 20 feet or thereabouts.

As far as the General Office tract, that is Item No. 9, instead having 'LC' and restricting convenience stores and others, I think there are quite a few other items like car washes and some other items that can be permitted in the 'LC' district that have greater nuisances. I am not sure that that provides the protection to the residential property to the north. I guess I should have thought of that landscape buffer myself that he offered. Are there other questions about this?"

GAROFALO "What I was asking for was is staff going along with the group residences, it is okay to eliminate that restriction?"

KNEBEL "I can see some pluses and minuses to it."

GAROFALO "That is what I am getting at."

KNEBEL "If you allow them to do a group residence for a convent, you know, most people would say that is okay, but there are other types of permitted uses in group residences that I would might be less desirable."

KROUT "I think our general position is that when you are out here in a residential area, five, eight or ten years ahead of development, that in a low density residential environment, even if the adjoining land is owned by relatives of the property owner, that we should put some restrictions on and say 'let's allow this to develop' like we typically would, which is typically 35-foot height limits and typically buffers adjacent to low density residential lots. And if someone wants to do something special, like at 13th and Maize Road they came in and got a PUD for elderly housing at a certain density, but to be talking about 60-foot and 45-foot height limits of the apartment density that is permitted in 'GO', which is 79 units per acre, and to not have the proper buffers adjoining these uses, and to permit access to 29th Street, even though it has one lane of paving, those are pretty big steps back, I think, from what we normally expect on CUPs.

So our position, basically stands as is. I think we have agreed on how to deal with the decel lanes and improvements; the petitions for those. But I think outside of that, that our position remains the same."

WARREN "Item No. 8 at 45 foot, Marvin, can you deal with that?"

KROUT "Well, typically, we have a 35 foot limit, and again if you have 'GO' zoning, you are allowing densities that are higher than the 'MF-29' district, which is 29 units per acre. I just think if you are going to permit that kind of density that we ought to wait down the road until there is a user and a more definite plan. We know this neighbor and maybe the rest of the neighbors in that area don't care, but I think that in an area like that, that when you are going to be doing high density apartments that are 45 feet tall, adjacent to single-family lots that we should wait down the road until there really is a user and he really comes in with a plan and we review it like we have reviewed some of those other projects in the past.

This is purely speculative, and you are raising the bar much higher than you have done in other CUPs in situations like this."

GAROFALO "Are there any other questions? Okay. We will take it back to the Commission then."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning uses and character of the neighborhood: There is undeveloped agricultural land located south and east of this site. Residential properties on large lots are located north and west of the site. All property in the area is currently zoned "SF-20." However, the request is consistent with the historic pattern of zoning and development inside the city and is consistent with the approved (subject to pending platting) Westridge CUP at the southeast corner of 29th Street North and 119th Street West. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned residential and could be developed as such, once sewer and water was available to serve this property. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions imposed upon the applicant, including the screening wall and the limitation on the proposed uses, should alleviate any potential impacts on the surrounding properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Suburban" development. The Comprehensive Plan recognizes that new growth will require the development of additional commercial areas to meet the convenience and shopping needs of new residents. The Land Use Guide indicates that arterial intersections like this should be expected to accommodate retail commercial development. Impact of the proposed development on community facilities: This application could significantly increase the traffic on the two roads which serve this site. However, it is unlikely that this site will develop for a number of years, and through the required improvements to the roadway system this impact should be reduced.) I move that the application be approved as recommended by staff, with the exception of on Item 5, which would limit the accel/decel lane to the major entrance.

GAROFALO moved.

WARREN "You wouldn't want to modify that decel lane to the major opening?"

GAROFALO "Right. To the major entrance."

WARREN "So there are two things you are talking about in your motion there. One is that there would be one lane for construction, or two?"

GAROFALO "No, two. Is there a second?" **PLATT** seconded the motion.

WARREN "Let me ask you again for sure. In Item No. 5, the only thing you changed then, was.."

GAROFALO "The accel/decel to the major entrances."

SUBSTITUTE MOTION: That the request be approved, with the 35% on No. 2, as opposed to 30% square footage; and to leave in the group residence limitation. Under No. 5, I want to accept what staff has now agreed on the accel/decel lane, and recommend one lane instead of two lanes on No. 8, to allow the 45 foot height; on No. 9 that we approve the 'LC' zoning with the prohibition of the convenience stores, fast food, outdoor speakers, car washes and include a 20 foot landscape buffer on the north and the west.

HENTZEN "I think staff has already agreed to that, but the paper doesn't say that, so I want to include it in the motion."

KNEBEL "The 30% refers to the building coverage. The floor area ratio of 35% is recommended in item No. 2."

HENTZEN moved, **WARREN** seconded the motion.

WARREN "I just want to kind of comment on this. Generally speaking, everybody has admitted that 119th Street and 29th Street are going to be major arterials. We just haven't been requiring that that paving on a major arterial be paid by the landowner. Maybe a portion of it. Like most people have to pay for a street, they don't have to pay for a four lane."

KROUT "Let me say that we don't usually don't get zoning requests for commercial development that are on unpaved roads either. What probably is going to happen is that the City or the County will be out here paving 29th Street between 119th and 135th to some sort of standard, two-lane standard before this area develops, and then we will revise the petition that will probably just be taking the turn lanes, and not anything else. It is kind of like in your typical subdivision cases, too, if a developer is out there ahead of that improvement, we do make him provide two lane paving to his subdivision entrance. To me, if we are going to do it for a residential subdivision, if they want to develop out ahead of someone paving that street, then they ought to pay for that paving. Obviously if the County or City paves a two lane mile section there, we are not going to require them to reimburse the City or County for it. It is just not programmed in the CIP so someone is going to have to fit it in, but right now, it is not in the CIP for paving in the next ten years on the City's program or the next five years in the County's program. Likely, though, will it be paved before this area develops for commercial? Probably."

JOHNSON "Marvin, what they want to do is pave one lane to the proposed zoning change are?"

KROUT "No, they don't really want to pave one lane; what they want us to do is hold a petition so that we can combine it with the property to the south."

JOHNSON "Okay. Now, if their major entrance was halfway across this, then in reality, you would have the same thing that you would if it was a subdivision, is that true? Halfway west of 119th."

KROUT "In terms of pavement, yes. It is a commercial subdivision."

BARFIELD "Okay, relative to the recommendation, staff is saying that this CUP be held to the same standards as the previous one. So my question is, did they agree to do that on the previous one?"

KROUT "Yes, they did. It was the same owner on the southeast corner and it is my understanding that is why he has hired a different agent on this particular request."

OSBORNE-HOWES "I can't support this substitute motion. I think that it is a long way between the time now and the time that this develops. All we are really looking at now is whether it is appropriate to have commercial at that intersection and I am guessing that the majority of us are going to be saying yes. So for a first time out the shoot, far in advance, I think that going along with staff's recommendations seem like the most appropriate thing to do. What happens five to six years from now when they have more definite suggestions for development, that is another thing. So if we are looking at appropriate land use at this point, I really think that we ought to be going along with staff's recommendations, which is what I will do."

WHEELER "I have a question on this two lanes of paving. Are we saying that they would provide two lanes of paving to the entrance of the subdivision or two lanes of paving the whole length of the project?"

KROUT "We said to the length because there will probably be a major entrance somewhere around the middle, but then there will be an office parcel or parking parcel over to the west of that, so I am sure that most of the development is going to be along most of that frontage."

WHEELER "I guess I am just curious, if we do two lanes, and I am thinking of a compromise if you do two lanes to entrances to provide access, then internally, they may be able to have some design flexibility that might limit their paving exposure. And you were after paving into the commercial parcel anyway, typically. Is that amenable, or not?"

KROUT "The problem is that we don't know how to take the petition. You could say take a petition to the westernmost access point and then, at the time of platting we will determine where that westernmost access point is. We just assumed, and maybe we were wrong, that they would have an access point near the west end."

GAROFALO "In a CUP, they can come back later on and ask for it."

KROUT "Yeah. I think that what this says is that at the time of platting, they will guarantee all site improvements. These improvements are anticipated to include—that sort of suggestion is the sort of thing that we probably would agree to, like we would have worked out the other issue internally."

WHEELER "As I understand, the trend is to try to internalize this commercial; the PU entrances and internalize the traffic to individual parts."

VOTE ON THE SUBSTITUTE MOTION: The motion failed with 4 votes in favor (Warren, Johnson, Carraher and Hentzen) and 6 in opposition (Wheeler, Marnell, Platt, Garofalo, Barfield, and Osborne-Howes).

GAROFALO "The substitute motion fails."

WHEELER "I would like to offer another substitute motion."

SUBSTITUTE MOTION NO. 2: That the request be approved, subject to the following:

1. Prior to issuing building permits, a plan for a pedestrian walk system shall be submitted and approved by the Director of Planning. This walk system shall link sidewalks along 29th Street North and 119th Street North with proposed buildings within the subject property as determined necessary by the Director of Planning.
2. Parcel 1 and 2 shall be limited to a maximum building coverage of 30 percent, per Section III.C.2.b. (2). (b). of the Unified Zoning Code. Parcel 1 and 2 shall also be limited to a maximum floor area of 35 percent.
3. The following uses shall be prohibited from all parcels in the CUP: adult entertainment establishments, group homes, group residences, halfway houses, correctional placement residences, private clubs, taverns, and drinking establishments. Restaurants that serve liquor can be developed and may serve liquor, as long as food is the primary service of the establishment.
4. The development of this property shall only be permitted if public water and sewer services are provided.
5. At the time of platting, the applicant shall guarantee off-site street improvements. These improvements are anticipated to include the construction of two lanes of roadway along 29th Street North along the property frontage to the furthest major opening from the intersection and left turn lanes at the intersection 29th Street North and 119th Street West. The applicant shall guarantee 1/8 the cost of signalizing the intersection of 29th Street North and 119th Street West. The applicant shall also guarantee the construction of accel/decel lanes along the 29th Street North and 119th Street West frontages to the furthest major openings from the intersection.
6. All parcels approved for "GO" uses, shall comply with all of the City of Wichita sign code requirements for development in the "GO" district. All signs shall be spaced 150 feet apart on both parcels. Window display signs shall be limited to 25 percent of the window area. No signs shall be permitted on the rear of any building facing north or west within 200 feet of the north and west boundaries of the CUP.
7. Hotel or motel uses shall not be permitted on Parcel 1.
8. Buildings in Parcel 1 shall be limited to a height of 45 feet within 200 feet of the north and west boundaries of the CUP.
9. The north 250 feet of Parcel 2 east of the reserve shall be prohibited from drive thru establishments, car washes, convenience stores, fast food restaurants, and establishments with outdoor sound amplification systems and speakers and shall be limited to a building height of 1 story. A 20-foot landscape buffer shall be provided along the north and west property lines of the entire CUP.
10. General Provision #1A shall be clarified that it refers to 35 foot building setbacks.
11. At the time of platting, the applicant shall guarantee the required drainage improvements.

12. Complete access control shall be provided along the first 150 feet from the intersection of 29th Street North and 119th Street West, and any openings in the first 250 feet from the intersection shall be restricted by design to right turn in-out only.
13. General Provision #9 shall be modified to require similar/consistent parking lot lighting elements, light poles limited to 24 feet in height, and a prohibition on extended use of backlit canopies and neon lighting.
14. General Provision #9B shall be modified to remove the provision for allowing further division of parcels without adjustment to the CUP.
15. General Provision #10 shall be modified to require screening of loading docks and services from *all* residential areas.
16. General Provision #11 shall be modified to require a financial guarantee for plant material approved on the landscape plan for that portion of the CUP being developed prior to the issuance of any occupancy permit, if the required landscaping has not been planted.
17. General Provision #14 shall be modified to require building exteriors to share uniform architectural character, to be predominantly earth-tone colors with vivid colors limited to incidental accent, and to use materials similar to surrounding residential areas.
18. General Provision #15 shall be modified to require the 6-foot masonry wall to be constructed with a pattern and color that is consistent with the buildings on the site.
19. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
20. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
21. Prior to publishing the resolution or ordinance establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-251) includes special conditions for development on this property.
22. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

WHEELER moved.

GAROFALO "What did you say about the 20 foot buffer?"

WHEELER "To accept the 20-foot landscape buffer on the north and west."

JOHNSON "What was your change on No. 8 again?"

WHEELER "I don't have a problem with the 45 feet."

KNEBEL "I guess I am confused. Do you want to change the whole parcel to a 45 foot height restriction?"

WHEELER "You are suggesting one story, which is typically 35 feet, and I don't have a problem with going to 45 feet."

KNEBEL "Okay, within the 200 feet?"

WHEELER "Uh huh."

GAROFALO "And on No. 9 you said....change the 'GO' to 'LC.?'"

WHEELER "Uh huh."

JOHNSON seconded the motion.

GAROFALO "Is there any discussion on the second substitute motion? Okay, let's have a roll call vote again."

VOTE ON THE MOTION: The motion carried with 6 votes in favor (Johnson, Warren, Marnell, Wheeler, Hentzen and Carraher) and 4 in opposition (Osborne-Howes, Barfield, Garofalo and Platt). McKay, Lopez, Michaelis and Warner were not present.

KROUT "This recommendation will go to the County Commission. If you spoke, you will get a courtesy notice of when the County plans to hear this item."

KROUT "While we are waiting here, would you have a problem, on Thursday, February 10 with beginning the MAPC meeting at 3:00 in the afternoon? We have five cases and we think they will take an hour and a half. Then having a set time at meeting at 4:30 to consider the Conditional Use for the City's proposed sewer plant at 135th and 45th Street.

We have been asked by the applicant, who is the City of Wichita and their consultant to schedule that hearing for late afternoon, if not evening so that it is easier for people to come to that meeting. February 10 is a regular Planning Commission meeting. So, we are suggesting starting at 3:00 and having that hearing scheduled for 4:30. We need to know for advertising purposes.

The other thing I would like to tell you, while I am on a roll here is that the 19th, 24th and 25th, the evening public hearings on the Comprehensive Plan, and you should have a newsletter, some plans and all of that, the Law Office has told us that we do need to have a quorum at each of those hearings, meaning we need eight Commissioners at each of those people. I will get the word out to the Planning Commissioners who aren't there. Again, like I said, you don't have to attend all three of those hearings, but we would like to have some idea that we are going to have a quorum, and that probably requires each of you to attend two of those three. Does anybody know of any that they cannot attend of those meetings, the 19th, 24th, and 25th?"

Discussion among the Commissioners here.

KROUT "Well, it sounds like the most important meeting to have the rest of you come to is on the 24th."

GAROFALO "The Monday meeting is out west at the County Extension office, and the Tuesday one is down here."

KROUT "If there are any of those dates that you think that you are not going to be able to make it, try to give me a call and we will try to make sure that we are going to have a quorum for each of those times."

8. **Case No. CU-552** – R & L Carpenter Enterprises and J & B Ventures, applicants; Don Folger, Jr. & Associates, agent, request a Conditional Use on property described as:

Lot 1, except South 30 feet, R. & L. Carpenter 3rd Addition, Wichita, Sedgwick County, Kansas. Generally located east of Woodlawn and North of 37th Street North.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to allow a car wash to be located within 200 feet of a residential zoning district. The application area is a 0.76 acre platted tract located east of Woodlawn and north of 37th Street North. The site is currently zoned "LC" Limited Commercial.

The attached site plan shows a seven-bay car wash. Six of the seven car wash bays are depicted as self-service, with the seventh bay depicted as an automatic car wash. These wash bays are located 67 feet west of the east property line. The site plan also depicts four vacuums located east of the wash bays, on the eastern property line. Fourteen parking spaces are also shown along the east property line. The parking spaces are to be used for drying or vacuuming. The facility would have one access to Woodlawn.

Property to the east of the site is zoned "MF-18" Multi-Family and is developed with condominiums. Property to the south is zoned "LC" Limited Commercial and is developed with a drive-in restaurant and a convenience store. North of the site is currently undeveloped and was recently approved for "NR" Neighborhood Retail zoning subject to pending platting. West of the site is located in the City of Bel Aire and is currently undeveloped property with Bel Aire's B-1 General Commercial zoning.

Key Unified Zoning Code car wash "supplementary use requirements" include: buildings to be located at least 35 feet from arterials and 20 feet from other street right-of-way; 60 from the lot line of any residentially zoned lot, unless the property is being used for a nonresidential use permitted by-right in the underlying district; fencing, a minimum of six feet in height shall be provided along the interior side and rear property line, when adjacent to a dwelling; all area utilized for washing or drying, including ingress and egress, shall be paved; lighting shall comply with lighting standards in the code; no string-type lighting shall be permitted and signage as per the sign code.

As depicted on the attached site plan, the project complies with the building setback and site paving requirements. Fencing will be required along the east property line where adjacent to residential dwelling units. Landscaping will be required per the "landscape ordinance." Since the vacuums are shown on applicant's site plan approximately 5 feet from the residential property to the east, planning staff is recommending that approval be subject to a revised site plan showing the vacuums on the west side of the car wash bays.

CASE HISTORY: The site is in the R & L Carpenter Third Addition, which was platted October 15, 1997.

ADJACENT ZONING AND LAND USE:

NORTH: "NR" Undeveloped
SOUTH: "LC" Restaurant and Convenience Store
EAST: "MF-18" Multi-Family
WEST: Bel Aire Undeveloped

PUBLIC SERVICES: The site has frontage to Woodlawn, a two-lane arterial. Woodlawn has traffic volumes of 9,900 vehicles per day. The 2030 Transportation Plan estimates the volume for Woodlawn will increase to 15,000 vehicles per day. Municipal services are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
- B. No dryers shall be associated with automatic wash bays.
- C. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
- D. The applicant shall submit a revised site plan for approval by the Planning Director, prior to issuance of a building permit, that locates the vacuums on the west side of the car wash bays, provides an area for the required landscape buffer along the east property line, and indicates the location and type of fencing along the east property line. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- E. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property to the north, south, and west of the site are zoned for commercial development, with existing commercial uses south of the site. Property to the east of the site is zoned for and developed with multi-family residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial which accommodates retail, commercial, office, and other complementary uses, including car washes with a Conditional Use if located within 200 feet of a residential zoning district. This site could be developed with such uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing and landscaping requirements.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials. This site has frontage to Woodlawn, a two-lane arterial. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, fencing and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas.
5. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would could be generated by other uses permitted in the "LC" district. Other community facilities should not be adversely impacted.

KNEBEL "The site plan complies with most of the special conditions that the Unified Zoning Code places on car washes. We will require some landscaping that is not shown on the site plan. In addition to that, we will require a fence along the east property line that is not shown on the site plan. Staff is also requesting that the vacuums that are shown in the parking spaces be moved and placed in front of the car wash bays so that you would vacuum before you go into the car wash, due to the close proximity of multi-family housing units to where the vacuums are shown on the site plan currently. I am available for any questions."

GAROFALO "Scott, didn't we approve a car wash just north of the expressway off of Woodlawn a while back?"

KNEBEL "Yes, right down by the convenience store, it seems. Isn't there a car wash down there at about 32nd Street? There is also a car wash in the City of Bell Aire just north and west of this site."

HENTZEN "Scott, is this in the City of Wichita?"

KNEBEL "Yes, it is."

GAROFALO "Okay, we will hear from the applicant."

DON FOLGER "I am the agent for the applicant. We are in agreement with everything in the staff recommendations with a little clarification of Item D, which talks about the vacuums. We believe that with reworking this design that we should be able to—with 'LC' you can go up to 5 foot on a side yard setback—we should be able to move the car wash (indicating) this direction, gain some space up here, and we would like to have the option of putting vacuums there or here, but take them away from there and still have the same number of drying stalls."

We will have to work with the Planning staff to get something that they will approve on that, but we want to have the option to try that, if we can make that work. Other than that, we are in agreement with everything that they said.

This car wash is one like I brought before you guys before. I can pass this around if you want, but it is the split-face, block, wood-shake shingle roof. There are about half a dozen of them around. Are there any questions?"

GAROFALO "Are there any questions of the applicant's agent? Okay. Thank you. Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition? I see four people to speak in opposition. Okay, the first one. Please state your name and address."

SUSAN SCHAINOST "I live at 4012 Bayberry, which is at 39th and Woodlawn in the Northbrook neighborhood. I brought pictures with me to show you the car washes and the locations so you can see them. May I bring them to you?"

The Northbrook Homeowner's Association is against the car wash. We have 125 homes with 183 children in our neighborhood. I moved in 12 years ago and our property values were approximately \$85,000 and currently our homes are being assessed at \$140,000. We have worked hard to maintain our quality of life and we believe this to be an unnecessary business, as there are four bays in the Bel Aire car wash, which is one block west of this location. There are eight bays in the car wash located one half mile south of the requested location, and that would make 19 bays of car washes.

Currently, what we do to ensure our quality of life--there are accidents outside Sonic, one as recently as Monday, where three cars were in the accident. I was a victim of the accident at 37th and Woodlawn in 1991, so we are concerned about the traffic increase. The amount is going to be interesting. We have crime that we currently continually fight. We have had one neighbor held at gunpoint, we have break-ins. We had one person building bombs for a militia group that is now in jail, thank goodness. We have people hiding in the creek when they come and rob the Coastal Mart, which is right next to Sonic, and we have had cars stolen. We have had cars stolen. We are concerned about the noise from the dryers, the car stereos late at night. We currently contend with Barnacle Bill's Fantasea's outside speakers in the summertime and we are concerned that that is going to continue and get worse.

With the pollution from the drained chemicals going into Chisholm Creek, which surrounds our area, there is an open drain in front of the property that goes all the way down to K-96 and the City pond in the Nature Center there. We are of the understanding that there is a business coming in across the street, which would be a Papa John's, an liquor store and a dry cleaner in that unit. Currently we contend with trash blowing from Coastal and Sonic and the hoodless lights at Emprise Bank and Sonic are interesting at about 10 o'clock at night. We were not notified of the rezoning and came this summer and worked with you. We are listed in the City Planning Commission. We were not notified of this at all. We request that this area go to Neighborhood Retail instead of Limited Commercial. Do you have any questions on the pictures that I presented to you?"

BARFIELD "Ma'am, where is the first car wash that you alluded to that I believe you said had four bays?"

SCHAINOST "It is one block north. It is (indicating) right there."

WARREN "And where do you live?"

SCHAINOST "I live in that dark spot right up there (indicating) 39th and Woodlawn."

GAROFALO "Ma'am, do you represent the Neighborhood Association?"

SCHAINOST "I represent the neighbors. Our Homeowner's Association president is here. I have been working with the legal aspects of our neighborhood for 12 years."

GAROFALO "Okay. Are there any other questions of the speaker? Thank you, ma'am. Next speaker."

LYNN MAUK "Hello. I am the President of the Northbrook Homeowner's Association which Susie Schainost made reference to. I live at 6904 East 40th Street North. The board met this past Sunday and the board is not in favor of another car wash. We feel like it is an unnecessary business for this area. Not only do we have the car wash off of 39th Street to the west and the one south of us on Woodlawn, but there are numerous ones over on Rock Road, not too far away also. The one that just went in by the Miami Grill, just north of K-96, you hardly ever see any cars there, so I can't see that putting another one up there would generate any more business. The most used car wash is the one on 39th, which is in Bel-Aire."

We weren't notified about this and the sign has not been up the regulated period of time on the lot, I don't believe. I found out about this from David Babbish from Willowbend, and they are not in favor of it. I called Martin Platt, who is the President of the

Chisholm Creek Homeowner's Association, and they had not been notified either. We are real concerned about the pollution, the lights and the noise. We get so much trash from the Sonic and even with fences and stuff, I think this would be a problem. We ask that you rezone it for commercial residential. Thank you."

GAROFALO "Are there any questions of the speaker? Thank you. Next speaker."

MARTIN PLATT "I am the President of the Chisholm Creek Homeowners' Association. We are these people here (indicating). There are 58 homes. I happen to live in this unit here, 3900 North Woodlawn, No. 26 Maverick. All of these little streets in here have sub addresses, and I am back here in this corner.

When the Sonic went in, we received notice as a Homeowners' Association that any detrimental affects should be minimized, due to various setback screening, fencing and landscaping, and all of this stuff that is on this same thing that I am looking at now. I have spoken with several people from the City that are surprised at the fence between us and Sonic is not in yet. Sonic serves as a wind tunnel or something because I pick up trash at the far end of our complex on a daily basis. It is a little frustrating for us, as homeowners to have to do this, not to mention the fact that we listen to their music all summer long. I am not against music, but I would kind of like to pick what I listen to.

It is just a real frustrating situation. If Northbrook hadn't called us, we wouldn't know about it. I would like to say that I speak for all 58 homeowners, but when you find out on Wednesday afternoon about a Thursday meeting, I didn't quite get a chance to contact all of them, but I haven't talked to anybody who is in favor of this, and I would like to reiterate the fact that Bel Aire has a car wash, there is one by the Miami Grill at 32nd and Rock Road, Total and Phillips have car washes. Behind the Total is about a 12-stall car wash. I like to keep my car clean, but I believe we are getting to an overkill situation on this. I believe that car washes are not real good for our sewage and all of that kind of stuff that we are fighting problems on, and capacity on it. I think we need to really think about do we really need another car wash? Our opinion is that it should be a real estate office, a doctor's office, that sort of thing. We think that would be a lot more acceptable, and then we would like to know, as an Association, if someone can tell us what recourse we have to battle the trash that we are dealing with at Sonic now.

I believe it is the same developer as is looking at this project. And, I noticed on this site plan that there is not a fence. There is not a fence at the Sonic and there is supposed to be a fence, so how do we deal with this? The other comment I have is I don't know if this board approved the Enterprise Rent-A-Car, but that looks like an airport. That is the brightest thing I have ever seen. We could take the street lights out of our complex due to the light at that Enterprise Rent-A-Car. It is a very, very bright, bright light coming out of there. Thank you."

GAROFALO "Are there any questions of the speaker? Who have you talked with in the City? Have you talked to anyone at all about the fence?"

MARTIN PLATT "I believe I have talked with a lady at the Health Department and she said they had to have a fence, and that she would get that taken care of. I don't have her name and don't know who it was."

GAROFALO "Have you talked with Central Inspection?"

MARTIN PLATT "Yes, I talked to Central Inspection about a tractor that was abandoned on our property for over two years, and Commissioner Pisciotte twice and we ended up having it hauled off ourselves because nobody from the City could help us with that."

GAROFALO "Okay, thank you. Next speaker."

KIRSTEN TEAGUE "I live at 2728 Beacon Hill Court. My husband and I happen to own the car wash that is located on the Bel Aire side of Woodlawn. As everyone else has mentioned, there has been two new car washes, probably within the last year, developed in this area. Our car wash has been in the Bel Aire area for, I think, sixteen years. But we know firsthand, with the addition of the two new ones already, there has been a change in our business and we just feel like this area already has enough car washes. I just wanted to make that known to everyone. That's it."

GAROFALO "Are there any questions? Are there any other speakers? Okay, then, the applicant or agent has two minutes for rebuttal."

FOLGER "I just want to address a couple of the points. I really can't address too much other than the fact that the free enterprise of how many car washes is needed. I am not sure that that is one that you want to tackle, but in terms of the trash and this particular car wash developer, they maintain their car washes, clean them up. That also goes right along with security. I can't say they do it every day because it depends upon how much traffic there is. At times when there are high traffic and a lot of people go through there, they have somebody there pretty much all day long because it takes that to keep people moving along, etc.

So, it will be a very well kept car wash with that fence along the back, which is necessary. That is going to keep it in there. We also are required the landscape buffer which will also help. Lighting is already a part of the regulations. Somebody mentioned the lighting. It does have to be buffered, so it can't go across the property line. We do that with all of the car washes. This is not the same developer that did Sonic. Sonic is selling the land to this developer. So it is not the same people. This is already zoned 'LC', so the issue really is not changing it to 'NR' or whatever. The issue is because we are within 200 feet that we have to come to get a Conditional Use to put in 'LC'. 'LC' is a zoning that is thought of as usable for car

washes, but it is one to be regulated by this Commission for each specific site. So, it has already been determined at a previous time that this is 'LC' zoning.

The last thing has to do with crime. It seems like that becomes an issue with about every car wash that I have done. Car wash owners, and this specific developer tries very hard to keep from having problems with crime. Anyhow, we don't have a problem with crime too much, because he worries about it also. Any questions?"

WARREN "Did I understand that you do agree to put up a fence along the east and north?"

FOLGER "We agree to put up a fence, but I don't think it was on the north in the application, was it? I don't see it in here, asking for it on the north. I don't know that we would be opposed to the north if you want to make that a part of the motion."

KROUT "That part along there is still zoned multi-family, so.."

FOLGER "So it really ought to be? We are not opposed to putting a fence to the north."

WARREN "That helps keep the trash confined."

FOLGER "Yeah. Hopefully it will stay with Sonic and the car wash, I don't know. Are there any other questions?"

BARFIELD "Sir, have you had any or attempted to have any dialog with any of the neighborhood associations in that area?"

FOLGER "No, we haven't."

OSBORNE-HOWES "What about hours of operation? Will you limit those?"

FOLGER "We're not wanting to limit the hours of operation. That is pretty standard."

OSBORNE-HOWES "I know we have had this conversation."

FOLGER "Yeah, we've had this several times. When you start limiting them, it becomes a very cumbersome thing to do, to limit the hours of operation. About the only thing that we have ever limited on any of the other ones is the vacuums and having, if it becomes a nuisance and is reported to the Health Department, then in the regulations we would install some kind of cut-off deal that electricity would cut off at a certain time so that you don't have the noise of the vacuums.

I think that was on one where the vacuums was a little closer to the residential than what this one is."

WARREN "On the east side of this, isn't that residential?"

FOLGER "Yes."

WARREN "On one other one, didn't we talk with you about and did have a limitation on say 11 o'clock the vacuum loaders automatically went off on the east end?"

FOLGER "Yeah, on that one, we made it so that if it became an issue, then they would be required to install some kind of an electrical cut-off that would automatically cut off, you know a timer or something that would cut them off so people couldn't come in and put money in and use them."

WARREN "Could that be satisfactory?"

FOLGER "I don't think that is what we want, no. I would rather leave it because we are moving them clear on the west side. If we were going to leave them where they are, we would be in agreement to that, but since we are moving them to the other side, I think we would rather leave it that if it became a nuisance and it was turned into the Health Department as a noise nuisance—they regulate noise nuisances, and then it was justified that it really was happening, then we would install something like that."

MARNELL "You just said move them to the west side. Didn't you indicate that it was to the north side when you were pointing to that earlier?"

FOLGER "We would like to have the option to be able to do north or west, whichever it ends up being, based on the Planning Staff approving that as they are going to approve the revised site plan. If you guys don't want us to put them to the north, then we will just settle with them being to the west. We are not opposed to that either, but we were kind of wanting to be able to re-look at the issue, since we can't put them on the back.

We have done some, not in the City of Wichita, but in Derby, where we put them over on the side like that as you turn and go out. If we angle the stalls in there and put the vacuums in between them, it works pretty well. In fact, sometimes we have done them both ways, as you go in and as you go out, and put two going each direction."

GAROFALO "Are there any other questions? Thank you. We will take it back to the Commission."

OSBORNE-HOWES "I guess my first question is did we get the notification issue resolved?"

KROUT "You had, a number of months ago, and some of you maybe weren't here, but to the north of this, and closer to the Northbrook Homeowners' Association, there was a request for 'NR' zoning. That is why one of the homeowners' was talking about Neighborhood Retail zoning. You approved Neighborhood Retail zoning. I think it was originally a request for 'LC' and we recommended 'NR'. The applicant went along with it and you approved it. The homeowners' association was notified then because the association property was within the notice area. Here it wasn't in the notice area and that homeowners' association, neither that one or the Chisholm Creek Homeowners' Association is on the list of neighborhood associations that we do notification on all cases in the general vicinity.

Our ownership list shows that the Chisholm Creek Homeowners' Association was sent a notice along with individual homeowners', who live immediately to the east, Mr. (Martin) Platt indicated that it may have been a previous president of the homeowners' association and somehow it got to the management office. So there was a letter sent, but somehow the letter got kicked around and that is why he didn't receive notice until late. So the notice was sent out properly to the association because the association owns property in the notice area, but apparently he didn't receive it until late.

What I am going to do with both of these homeowners' associations is to put them on the Neighborhood Association list so that they will receive notice of anything in the general vicinity. The reason that the Willowbend Homeowners' Association knew about it is because they are on that kind of list. So even though they are further away than these homeowners' associations, they found out about this request."

WARREN "On our little map that was sent out, I can't quite tell, is there a road coming out to Woodlawn on the north side of this?"

KROUT "Yes."

WARREN "Into that residential development. So what you are saying is that we have 'NR' then north of that road?"

KROUT "Right."

WARREN "How far north does that 'NR' go?"

KROUT "All the way to the back of the lots to the north of Northbrook Meadows."

BARFIELD "I do understand how free enterprise works. I am very familiar with this area. "

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Property to the north, south, and west of the site are zoned for commercial development, with existing commercial uses south of the site. Property to the east of the site is zoned for and developed with multi-family residential uses. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial which accommodates retail, commercial, office, and other complementary uses, including car washes with a Conditional Use if located within 200 feet of a residential zoning district. This site could be developed with such uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing and landscaping requirements. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials. This site has frontage to Woodlawn, a two-lane arterial. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, fencing and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would could be generated by other uses permitted in the "LC" district. Other community facilities should not be adversely impacted.) Because of the number of car washes that are currently located in and around this area; because of the close proximity to a residential area, it does require a Conditional Use, and because of the opposition of the residents in that immediate area, I move that we recommend to the governing body that the request be denied.

BARFIELD moved, **CARRAHER** seconded the motion.

GEORGE PLATT "This is a tough one because it is 'LC' zoning. I like the way Mr. Barfield put it that the requirement of a Conditional Use puts the burden on us to make a decision as to whether or not this works with the neighborhood. I agree with him that it does not.

I also think that I am probably going to start changing my position on car washes in general and become very, very reluctant to approve them outside of areas where it seems to me that such things as used car lots ought to be. I think that the car washes are becoming so common now and they operate 24 hours a day, that I think we are going to have to start thinking of putting them someplace where they can not disturb residents, and I don't think we need to start putting them out half a block from everybody's house. I expect I will be getting kind of tough on car washes."

OSBORNE-HOWES "First of all, I will be supportive of the motion to deny, but not because of the issue of there already being too many car washes, while that may be true. I think free enterprise says that, in terms of the competitive nature, if this were a suitable location, if the location itself were suitable, then I wouldn't use that as a reason. I am very concerned that it abuts residential property and the movement of the vacuums to the north side would still be just about as close, particularly the ones on the eastern part of the northern part, the northeast corner to residential area. That sound does carry.

I understand that they need to have a car wash open 24 hours a day to make money, and in that case you need to find, I feel, a location that is suitable that would allow you to do that without interfering with the neighborhoods. I will support the motion to deny."

WARREN "I think that car washes can be successful on a limited hour basis. I don't know that they have to be 24 hour. If you have a neighborhood concern, then I hate to see us decide, like a chess game, what business goes where. I don't agree with that. I am sensitive to what these folks are saying, but we do have to allow the free enterprise system to work.

Basically what we are saying here is that car washes are allowed on 'LC', subject to conditions, and it is up to us to set the conditions. If we say a condition is that that baby closes at 11 o'clock, then I think they will do that. I would be in favor of allowing it with conditions that would make it compatible with that neighborhood."

BARFIELD "I respect what you are saying, sir, but the fact of the matter is that we have already made provisions, and that is why he is coming before us today, asking for the permission for a Condition Use."

WARREN "I'm sorry, I didn't get that."

BARFIELD "I am saying that we have already made those stipulations and that is why he is coming before us today because he is wanting to locate this within 200 feet of a residential area. That is why he is coming for a Conditional Use."

WARREN "Yeah."

GAROFALO "I am going to support the motion to deny and I am taking into consideration the other car washes also from the standpoint of that I don't think that another car wash is the best use of that property. And the neighborhood opposition, and the proximity to the neighborhood doesn't seem like a necessary use of that land, to have another car wash in the immediate area. For those reasons, and others, I am going to support the motion. If there is no other discussion, we will have a vote."

MOTION: The vote resulted in a moot vote of 5 votes in favor (Platt, Carraher, Garofalo, Barfield and Osborne-Howes) and 5 in opposition (Warren, Johnson, Wheeler, Marnell and Hentzen.

KROUT "That is a failure to deny, but it doesn't mean it is approved. In order to recommend approval, there has to be a majority vote to recommend approval, otherwise it will be sent to the City Council as a disapproval and there will be a 2/3 majority requirement. That is the way we send it if there is not another motion. Someone might want to try another motion."

GAROFALO "We could leave it like it stands and let the City Council decide."

KROUT "A failure to recommend approval is an approval if you don't make any more motions, but a failure to deny is not."

MOTION: That the request be approved, subject to the following conditions:

1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. No dryers shall be associated with automatic wash bays.
3. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
4. The applicant shall submit a revised site plan for approval by the Planning Director, prior to issuance of a building permit, that locates the vacuums along the north or west property lines with no vacuums located in the eastern 1/3 of the north property line, provides an area for the required landscape buffer along the east and north property lines, and indicates the location and type of fencing along the east and north property lines. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
5. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

WHEELER moved, **HENTZEN** seconded the motion.

HENTZEN "I am seconding that motion because sometime I have got to agree with what the staff has recommended. They recommended approval and so I am going to support staff here."

GAROFALO "Any other discussion? Okay, do a roll call."

VOTE ON THE MOTION: The motion carried with 6 votes in favor (Marnell, Wheeler, Johnson, Warren, Carraher and Hentzen), and 4 in opposition (Platt, Garofalo, Barfield, and Osborne-Howes).

KROUT "Unless the applicant objects or unless a property owner within the notice area, which could include the homeowners' association, I suppose, files a written protest within 14 days of today's decision, then this is the final decision. If there is a protest that is filed, then this case does go on to the City Council and the City Council will consider the action of the Planning Commission, but they won't have a public hearing like this. If you have any questions, follow up with Scott."

BARFIELD "If I might, I would like to say, that the homeowners' and the homeowners' association in that area that are uncomfortable with this, I would suggest that you do file a protest petition. I can tell you that there people on that City Council that feel a little bit differently about this than some of the Commissioners."

Carraher left the meeting at 4:37 p.m.

9. **Case No. CU-558** –Paradox Investment II, LLC c/o Cuy Mauck, applicant requests a Conditional use to allow a car wash within 200 feet of a residential zoning district on property described as:

Commencing at the Southeast corner of Lot 10, Block 1 of said Southwest Industrial Addition, said point being on the West Right-of-way line of South Meridian Avenue as now established; thence North 01 degrees 33'05" East along the East line of said Lot 10 and said West Right of Way line, a distance of 50.50 feet, to the point of beginning; thence leaving said East line and said West line North 88 degrees 14'09" East, a distance of 250 feet to a point on the East line of Lot 11, Block 1 of said Addition and said West Right of Way line; thence South 01 degrees 33'05" West along said East line of Lot 11 and Lot 10 and said West Right of Way line, a distance of 200 feet to the point of beginning. Generally located west of Meridian and north of Rita.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: This case was deferred from the January 13, 2000 meeting of the MAPC to allow review of this Conditional Use concurrently with a requested zone change and Conditional Use for a car wash for property located several blocks to the north on the east side of Meridian.

The applicant is requesting a Conditional Use to allow a car wash to be located within 200 feet of a residential zoning district. The application area is a 1.1 acre platted tract located west of Meridian and north of Rita. The site is currently zoned "LI" Limited Industrial.

The attached site plan shows an eight-bay car wash. These wash bays are located approximately 150 feet west of the east property line. The site plan also depicts five vacuums located west of the wash bays, with five parking spaces to be used for drying or vacuuming, and four vacuums located east of the wash bays, with fourteen parking spaces to be used for drying or vacuuming. The facility would have one access to Meridian and two accesses to an existing private drive on the south. A joint access to vacant property on the north would also be provided. A landscaped buffer is depicted along all property lines.

Property to the east of the site is zoned "SF-6" Single Family Residential and is developed with single family residences. Property to the south is zoned "LI" Limited Industrial and is developed with a grocery store with vacant out parcels available for additional development. Property to the north and west is zoned "LI" Limited Industrial and is developed with various offices, warehouses, and manufacturing businesses with vacant land available for additional development.

Key Unified Zoning Code car wash "supplementary use requirements" include: buildings to be located at least 35 feet from arterials and 20 feet from other street right-of-way; 60 from the lot line of any residentially zoned lot, unless the property is being used for a nonresidential use permitted by-right in the underlying district; fencing, a minimum of six feet in height shall be provided along the interior side and rear property line, when adjacent to a dwelling; all area utilized for washing or drying, including ingress and egress, shall be paved; lighting shall comply with lighting standards in the code; no string-type lighting shall be permitted and signage as per the sign code. Landscaping also will be required per the "landscape ordinance". As depicted in the attached site plan, the project complies with these requirements.

CASE HISTORY: The site is in the Southwest Industrial Addition, which was platted August 8, 1953. The lot proposed for the Conditional Use was created by a Lot split approved August 23, 1996. The owners of the lot also dedicated a sanitary sewer easement and access control along Meridian, which were accepted September 24, 1996. At that time, the site was proposed for development as an auto parts store.

ADJACENT ZONING AND LAND USE:

NORTH: "LI"	Office, General; Manufacturing, General; Warehousing
SOUTH: "LI"	Retail, General
EAST: "SF-6"	Single Family
WEST: "LI"	Office, General; Manufacturing, General; Warehousing

PUBLIC SERVICES: The site has frontage to Meridian, a four-lane arterial. Meridian has traffic volumes of 16,400 vehicles per day. The 2030 Transportation Plan estimates the volume for Meridian will increase to 18,400 vehicles per day. Municipal services are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. No dryers shall be associated with automatic wash bays.
3. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
4. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
5. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property to the north, south, and west of the site is zoned for industrial development, with existing and developing industrial and commercial uses surrounding the site on these three sides. Property to the east of the site is zoned for and developed with single-family residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial which accommodates moderate intensity manufacturing, industrial, commercial, and complementary land uses, including car washes with a Conditional Use if located within 200 feet of a residential zoning district. This site could be developed with such uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, and landscaping requirements.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials. This site has frontage to Meridian, a four-lane arterial. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas.
5. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would could be generated by other uses permitted in the "LI" district. Other community facilities should not be adversely impacted.

KNEBEL "This site plan shows that this is proposed to be an eight bay car wash. The bays are proposed to be towards the back of the lot. There are five parking spaces with vacuums along the west property line and then additional parking with vacuums along the east property line. The facility has an access to Meridian and also has a joint-access agreement with the property to the north to provide access to this point and in this way if that property to the north develops. There is a private drive to the south and there would be two access points to that private drive.

The Land Use Guide recommends that this area be used for industrial uses. It is located along an arterial which would indicate that it is appropriate for a commercial use such as a car wash. The Unified Zoning Code has several conditions in it that limits the lighting, noise and other adverse impacts of car washes. I will stand for questions."

GAROFALO "Are there any questions of Scott?"

OSBORNE-HOWES "Can I just ask a quick question? Where are the dryers? The vacuums?"

KNEBEL "There are vacuums, actually, on both the east and west line."

OSBORNE-HOWES "Okay. They are on both sides."

KNEBEL (Indicating) "There are four of them here and five here. Something like that."

MARNELL "Will this have any kind of fence or wall on the Meridian side?"

KNEBEL "No. No fence would be required. The property surrounding it is Limited Industrial and then to the east it is buffered by the arterial. It would be required to have a landscape streetyard."

KROUT "And a landscape shrub row. It would be a solid shrub screen but wouldn't be a 6-foot fence. It is supposed to be 3 feet tall."

WARREN "I couldn't hear you, Marvin, will you say that again?"

KROUT "The Landscape Ordinance will require that they plant a continuous low shrub screen along Meridian, and a couple of trees."

GAROFALO "Okay. Are there any other questions? Okay, we will hear from the applicant."

CUY MAUCK "Good afternoon. I live at 13210 West Central and I am one of the owners of Paradox Investment who is planning on putting this car wash in. Next time, could I go before the others?"

KROUT "You are going before them because they are coming back with one a block north."

MAUCK "We are aware of that, too. We own a car wash now at 47th and Broadway and we looked up and down Meridian to find a site. From 31st Street to Kellogg, and even further north, there are no car washes. There is one at 31st and Meridian and there is also one at Seneca and Pawnee. Both of those are fairly old. Our goal here was to build something that obviously would fit within the neighborhood. There is one catch on all of this. Builder's Inc. has approval to approve our designs before we do anything. We bought the land from them. They have been a lot tougher on us than hopefully you will be."

The design of it is very commercial in nature. If you are familiar with the Commerce Bank over on west Central, it has mirrored tops on it. It is very nice.

It is about 10 years old and still looks brand new. That is pretty much what we have agreed to. We agreed to something that would look good 10-15 years from now. With the amount of money, they felt, they put into the YMCA down south, the Trader's village, completely rehabbing it, their new self-storage units. They wanted something nice and we agreed to it. So, we came to an agreement, we purchased the land from them, but they still have final say on what we build. We will not put a dryer on the automatic. That was as agreed. The lot does have three openings, two on Rita, which is a private access road, not public, and then one on Meridian. We do share the access with Builder's Inc. for the land going north, again, per our agreement with them. So any fence between us and them is something we will work out with them, if that is okay. We hope to build something nice. Something that looks good 15 years from now and something that doesn't rust and fall down. There are enough of those. And that is what has created the opportunities today. They build a nice one, we build a nice one. There are some old ones out there. We would like to take advantage of the market."

GAROFALO "Are there any questions of the applicant? Thank you. Is there anyone else here to speak in favor of this application? Is there anyone to speak in opposition? Okay, ma'am. Will you state your name and address, please."

KAREN NESS "I live at 646 South Clifton. I am here on behalf of my parents who live at 2433 Rita, which is directly at the corner that would be facing this car wash. We have several concerns, one being the before mentioned car washes that are on Seneca. They seem to have a lot of traffic in the evening. It is a teenager's hangout, and there are lots of loud stereos playing and a bunch of people hanging out there. There is trash, there has been a lot of vandalism and things in that area. We really don't want to have this come to that neighborhood; they have lived there for 43 years now and that has always been a pretty quiet area until they started building across the street."

Traffic is a real problem. There is a lot of accidents, especially at the entrance into Food for Less. There has even been an accident where a car ended up in my parents' house. This would create more traffic coming in. Their road goes directly across to the entrance they are talking about and there will be two exits coming from that, which would add to that traffic.

I also have a letter here from their neighbors, who were unable to be here. Their names are Gary and Sandy Born. I would like to read that if I could. It says 'I am opposed to a car wash being located on the northwest corner of Meridian and Rita Streets in Wichita, Kansas. We have enough noise from existing traffic as it is. Also, additional traffic from a car wash will make it even harder to get on Meridian from Rita Street. In cold weather, the water on the street will freeze and cars won't be able to stop, so it will be unsafe. Then there is the trash issue, which will be blown across the street and will collect in our yards'. That is really about all I have to say on this. My Mother is here and she would like to speak on this also."

OSBORNE-HOWES "Which way does the house face? Rita or Meridian?"

NESS "It faces Rita. This would be catty-cornered from where the house faces."

GAROFALO "Thank you. Next speaker."

Lady from audience "I think she pretty well said everything. I don't need to speak."

GAROFALO "All right. Is there anyone else who would like to speak in opposition? Okay. The applicant has two minutes for rebuttal."

MAUCK "First, obviously, we want to be a good neighbor. Those are our best customers. We don't want to tick anybody off. Trash is always a problem but we do have somebody there every single day. In fact we have somebody there twice a day because mid-day it always gets busy, the bays get dirty with mud and so on and so forth. So the trash is always a concern. If you look at our facility now, every one of our trashcans has a domed lid on it, and that is on purpose. The bottoms are weighted with cement so they are not going anywhere. That seems to cut down on a lot of the flying debris. We are open on any suggestions on trash. We do everything we can to keep it to a minimum because I don't want to get phone calls at 9:00 o'clock at night. We do want to be a good neighbor."

GAROFALO "Are there any other questions? Okay, we will take it back to the Commission, then. It is my understanding from Dale that the previous car wash that we approved,...is that about a block north?"

KROUT "About a block to the north and on the other side of the street, if you recall. That was up closer to the railroad tracks. Maybe you have a slide that would show that."

KNEBEL "I think it would be right in here (indicating) is that right?"

KROUT "No, to the right and kind of off that screen to the top."

KNEBEL "Oh, yeah, I'm sorry. (Indicating) Over here."

KROUT "Yeah. If you recall, that was near the Eagle's Lodge and there were some homes in the back and we had opposition from a homeowner to the south. After the Planning Commission meeting, there were protest petitions filed by owners to the south, owners of the commercial land across Meridian and also two other homeowners. It was over a 20% protest and based on the additional neighborhood opposition and also because of the knowledge that this case was coming in for review, the City Council sent that case back to you for consideration.

Because of notice, we weren't able to schedule that until the next meeting, which is two weeks from today. We just wanted to let you know that we thought you had the option if you thought it was necessary, to close this hearing and then consider both of the cases and have votes on both of those cases on the same day. If you want to go ahead and vote on this today, you can do that, but if there is a protest petition on this one, then this one will be going ahead to the City Council and the City Council will be wondering what to do with this. We just thought that maybe the best thing to do would be to have both of these cases, since they are so close to each other in front of you and in front of the City Council at the same time. But that is up to you."

WARREN "Marvin, wouldn't you suggest that maybe this is a little bit different circumstance **unable to hear** than the other application we had?"

KROUT "Every car wash is unique and that is why we put them down as Conditional Uses. Maybe that is a mistake. Maybe we should just not permit them within 200 feet of residential. People would then look elsewhere. But they are all different from each other. You are just going to have to review that one again in two weeks."

JOHNSON "I don't really want to postpone it, but I am afraid if we go ahead and act on it today we will end up with it back here again, and I think that would even delay it longer. But if this one could be heard in two weeks with the other one I think it would be to the owner/applicant's best interest to defer it for two weeks."

MOTION: That the item be deferred for two weeks to the January 27 meeting.

JOHNSON moved, **PLATT** seconded the motion.

WHEELER "I guess I am just curious. What are going to know then that we don't know now about this case?"

KROUT "There won't be any more information about this case, I don't think. It is just that sometimes, like with mobile home parks, it is useful to look at the larger context and in this case, the larger context is that you have two car washes within a block of each other. Does that mean that you have to vote for one and not for the other one? No. But I think that it will be easier for the City Council to sort it out if they are looking at both at the same time, and maybe for you, too. But I said that you can go ahead and vote on this if you think you have all of the facts on this case."

GAROFALO "Marvin, was there much discussion on the Council on the other one?"

KROUT "No."

GAROFALO "They just shipped it back."

PLATT "Mr. Chair, I seconded the motion. I think I would like to examine them both at the same time in terms of the possibility that I might decide to approve them both. Otherwise, I will vote against this one."

BARFIELD "Do you remember what the vote was on this before?"

KROUT "The vote was 11-1 on the other one, and it was either you or George that voted against it. I don't remember which. Oh, it was someone else?"

MARNELL "It was Carraher."

BARFIELD "You are saying that it was an 11-1 vote for approval from us?"

KROUT "You all voted for it but one. The only opposition when you first heard it was from the property owner to the south. Since then there has been more opposition. I believe that the current owner of this property is also the owner of the property to the north and is part of the opposition on the case up to the north. But there is also the Eagle's Lodge and a couple of residents who also filed protest petitions."

GAROFALO "And in that case, didn't we limit the Conditional Use permit a little? We eliminated 200 feet..."

KROUT "You left a 125 foot buffer and Neighborhood Retail zoning between the car wash and that owner to the south."

GAROFALO "Right. Okay. We have a motion to defer for two weeks."

VOTE ON THE MOTION: The motion carried with 8 votes in favor and 1 in opposition
(Marnell).

10. **CU-553** – Jeff Gruenbacher (owner); Catherine and Gerald Mies (contract purchaser) request a Conditional Use to allow agricultural sales and service on property described as:

A tract of land in the West Half of the Southwest Quarter of Section 29, Township 25 South, Range 2 West of 6th Principal Meridian described as follows: Commencing at the Southeast corner of the West Half of the Southwest Quarter of Section 29, Township 25 South, Range 2 West of the 6th Principal Meridian; thence North 88°59'8" West (bearings based upon the bearing of the West line of the West Half of said Southwest Quarter as recorded in a deed for highway purposes filed in Book 1414, Page 198 of the Sedgwick County Register of Deeds Office) along the South line of the West Half of said Southwest Quarter 230.00 feet for the point of beginning; thence continuing North 88°59'08" West along the South line of the West Half of said Southwest Quarter 361.07 feet to the East highway right-of-way line as recorded in Book 1414, Page 198 Sedgwick County Register of Deeds Office; thence North 01°00'52" East along said highway right-of-way 30.00 feet; thence North 56°20'45" West along said highway right-of-way 122.78 feet; thence North 47°23'00" West along said highway right-of-way 607.30 feet; thence South 88°59'08" East 912.50 feet to a point 230.00 feet West of the East line of the West Half of said Southwest Quarter; thence South 00°16'53" West parallel with the East line of the West Half of said Southwest Quarter 500.00 feet to the point of beginning, containing 7.252 Acres in Sedgwick County, Kansas, subject to a road right-of-way easement across the South 30.00 feet thereof and any other easements of record.

AND

The east 230 feet of the South 500 feet of the west half of the southwest quarter of Section 29, Township 25, Range 2 West of the 6th P.M., Sedgwick County, Kansas, except for roadway along the south line. Generally located east of 199th Street West on the north side of 85th Street North.

LISA VERTS, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicants are requesting a Conditional Use permit to allow an agricultural sales and service business to operate on 10 acres of unplatted property in Sedgwick County. The applicants currently own and operate 9 tankers that are used to pick-up and transport milk locally and out-of-state; they operate this trucking business from their residence. With the approval of this Conditional Use permit, the applicants plan to construct an accessory building to be used as a milk Transfer Station to transfer raw milk from one tanker to another. Farm pick-up tankers would be brought to this location and the milk from these tankers would be transferred to a transport tanker to be hauled to a processing plant. The interior of the empty tanker would then be washed out within the transfer station. No exterior washing of the trucks or tankers would take place on the site.

The applicants have submitted a site plan showing the proposed location of the Transfer Station west of the existing residence. The 60 feet by 100 feet building will have driveway access in and out of the building and completely enclose the tankers during the transfer and washout process. The applicants estimate that 100 gallons of food-grade wastewater will be generated from each washout. According to the Health Department, with approved sanitizers and detergents, this wastewater volume can be accommodated within the on-site septic system. However, the proposed location of the transfer station is shown on a separate

parcel from the intended septic repository. In order to use the existing septic system, the two lots would need to be combined into one lot and require approval from the Health Department.

The Kansas Department of Agriculture stipulates regulations for such milk transfer stations, which are enforced through quarterly inspections by a State Certified Dairy Inspector. Under these regulations, the operator will not be allowed to store any items, or perform any functions within the building that are not directly connected to the operation of transferring milk. The building contents will be limited to the wash system, which consists of the following: two 10-horsepower pumps, stainless steel pipes & plumbing, two hot water heaters, and any other miscellaneous items that might be necessary to perform a Grade A Transfer and Washout.

The surrounding property is used for agricultural purposes and is zoned "RR" Rural Residential. The closest houses are 0.4 miles to the southwest and 0.6 miles to the north. The property is bounded on the south by 85th Street North and K-96 rights-of-way and on the west by the 199th Street North and K-96 rights-of-way.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH: "RR" – Agricultural uses
SOUTH: "RR" – Agricultural uses and street right-of-way
EAST: "RR" – Agricultural uses
WEST: "RR" – Agricultural uses and street right-of-way

PUBLIC SERVICES: The site is serviced by on-site septic and well-water systems. Direct access to this site is available from 85th Street North and 199th Street West, both being two-lane unpaved roads. K-96, a divided four-lane highway borders the property along the southwest corner. Traffic volumes are not available.

CONFORMANCE TO PLANS/POLICIES: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" and related uses. In 1996, the Unified Zoning Code established Agricultural Sales and Service as uses conditionally permitted in the Rural Residential and "SF-20" Residential districts. These uses are permitted, by right, in the Limited Commercial, General Commercial, CBD, Light Industrial, and General Industrial districts.

RECOMMENDATION: Based on information available prior to public hearings, planning staff recommends that the request for a Conditional Use be APPROVED, subject to the following conditions:

1. The Conditional Use for the establishment of a milk transfer station shall be subject to all applicable local, state, and federal regulations and laws, and prior to beginning operations, all applicable local, state, and federal permits shall be acquired.
2. The use of the site as a milk transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit.
3. The total number of tankers permitted to operate out of this facility shall be limited to 12.
4. Any violation of these conditions shall render this Conditional Use permit null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding land is zoned "RR" Rural Residential. There are agricultural and street right-of-way uses surrounding the site. The character of the area is predominantly agricultural.
2. Suitability of the subject property for the uses to which it has already been restricted: This site is zoned "RR" Rural Residential and could be used for agricultural or residential uses. However, the close proximity to K-96 makes the property ultimately less desirable for residential uses, especially along the west edge of the property, since the intersection of highways and section line roads typically develops with non-residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered on two sides by street/highway rights-of-way and agricultural operations on the other sides. The conditions attached to the approval of this request and the state licensing procedure minimize any detrimental effects. There is one home that is 0.4 miles southwest of the application area, across K-96, and another home that is 0.6 miles north of the application area.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. This milk transfer station supports many small dairy operations in south central Kansas and is an appropriate related agricultural use.
5. Impact of the proposed development on community facilities: None.

KROUT "Because we are running late, on the rest of these cases, unless we think we are going to have some opposition, let's try to give very brief descriptions and not go through the slides unless they request them."

GAROFALO "We don't want to lose a quorum."

VERTS "Okay. The applicant wishes to construct an accessory building that would be used as a milk transfer station. Milk collected from area dairies and farms would arrive at this location in one tanker and be transferred to another tanker and then the empty tanker washed out within that building. The tanker that the milk was transferred to would then haul the milk to a processing plant. The applicants currently operate a milk hauling trucking business from their home and currently own and operate nine such tankers. I will stand for questions. The applicant is here."

GAROFALO "Are there any questions of Lisa? Okay, we will hear from the applicant. Oh, excuse me a minute. Is there anyone here who wants to speak on this application? Okay."

GERALD MIES "I live at 19620 West 85th Street North, Colwich, Kansas. At the site where I am wanting to put the transfer station, which I currently have one out at Holcolm, Kansas right now, right in the middle of town. It would serve the same purpose as what we are doing now. We are closing that facility down out there because the business has moved towards the Wichita area, approximately 15 miles outside Wichita."

I have no problems with any of the recommendations other than No. 3 where it says that the total number of tankers permitted to operate out of this facility shall be limited to 12. I am currently running 9 out of there now and would like to be able to go to at least 20. Whether I will make it there or not, I don't know. I have been operating this business for 9 years and I am up to 9 trucks now. I just don't want to limit myself because we are looking at another big dairy out in Western Kansas around the Holcolm area that would add 3 to 5 trucks, depending on the size of the facility. Very seldom there are more than 3 to 4 trucks to my place at one time, very seldom. Are there any questions?"

HENTZEN "That is kind of what I was going to ask you, Jerry. You are not talking about 20 trucks being there at one time?"

MIES "No, sir."

HENTZEN "Would 20 of them come all day, that is?"

MIES "No. Most of my drivers take trucks home to their residences. Some of my drivers are out of Western Kansas, so I don't see the trucks but once in every two weeks."

HENTZEN "Okay. What are shipment trucks?"

MIES "Little trucks. I run 27 dairies out of Sedgwick County, Reno County, plus one big dairy out at Lakin, Kansas. Most of my small trucks around here would bring their milk into the transfer station, transfer onto a transport trailer, which is usually 3,000 to 5,000 pounds lighter, then hauled out of state."

JOHNSON "Marvin, this requirement of 9 trucks, is that talking about at one time on that facility, right?"

VERTS "The number 12 stipulation came as a request from County Code Enforcement, Glen Wiltse. He was looking at their existing use of 9 trucks, expanding that by 30%. His concern was not so much the number of trucks on the property at one time, but the impact of more than 12 trucks on the rural road conditions. Right now, they are all gravel roads around there. So his intent was to limit that impact of those heavy trucks."

JOHNSON "This is right off of K-96."

VERTS "Right, but the road is.."

MIES "It is 360 foot to my driveway from K-96."

VERTS "Eighty-fifth Street, which will be accessed here is a dirt road as well as 199th Street comes up this way."

MIES "That is a county road and not a township road."

JOHNSON "Other dairies are quite a ways away from this. I think they would come in on a highway rather than driving down a dirt road."

MIES "Right."

VERTS "They would come in off the highway, but the road right in front of the property is a dirt road. That is what would be accessed into the driveway and into the transfer station."

MIES "His concern, he told me, was that he was concerned about if I ever sold the place and another trucking company would come in there with 200 or 300 trucks or whatever. I could see his point, but I don't want to be limited to 12. I am within 3 of that already. I would sooner say no more than 10 trucks on my place at one time, which isn't going to be. I am not too worried about that."

OSBORNE-HOWES "My question is real simple. How can we enforce or know how many total trucks are using that facility? I think the only thing you can enforce is limiting a certain number there at the same time. Did you say ten?"

MIES "Yes."

OSBORNE-HOWES "Maybe Lisa has a comment."

VERTS "I questioned Glen Wiltse on that as well, and he said he would have a harder time enforcing the number of trucks on the property at any one time as opposed to business records and knowing how many trucks are operating out of that facility."

MILLER "I don't think Glen is going to care if you bump it to 20 trucks. He just wanted a number."

MIES "That is what he indicated to me was that he just wanted a number."

GAROFALO "Are there no other questions? I will have to ask one more time. Is there anyone else here to speak in favor of this application? Anyone to speak in opposition? Seeing none, we will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding land is zoned "RR" Rural Residential. There are agricultural and street right-of-way uses surrounding the site. The character of the area is predominantly agricultural. Suitability of the subject property for the uses to which it has already been restricted: This site is zoned "RR" Rural Residential and could be used for agricultural or residential uses. However, the close proximity to K-96 makes the property ultimately less desirable for residential uses, especially along the west edge of the property, since the intersection of highways and section line roads typically develops with non-residential uses. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered on two sides by street/highway rights-of-way and agricultural operations on the other sides. The conditions attached to the approval of this request and the state licensing procedure minimize any detrimental effects. There is one home that is 0.4 miles southwest of the application area, across K-96, and another home that is 0.6 miles north of the application area. Conformance of the requested change to adopted or recognized Plans/Policies: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. This milk transfer station supports many small dairy operations in south central Kansas and is an appropriate related agricultural use. Impact of the proposed development on community facilities: None.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The Conditional Use for the establishment of a milk transfer station shall be subject to all applicable local, state, and federal regulations and laws, and prior to beginning operations, all applicable local, state, and federal permits shall be acquired.
2. The use of the site as a milk transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit.
3. The total number of tankers permitted to operate out of this facility shall be limited to 20.
4. Any violation of these conditions shall render this Conditional Use permit null and void.

BARFIELD moved, **OSBORNE-HOWES** seconded the motion.

VOTE ON THE MOTION: The motion carried with 9 votes in favor. There was no opposition.

KROUT "That action will be final unless a neighbor opposed this and file a protest petition."

MIES "Uh huh. Thank you."

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11. **Case No. CU-557** – Southwestern Bell (Owner); Mid Kansas Engineering Consultants, Inc. c/o Jason Gish (agent) request a Conditional Use to allow utility, major on property described as:

Lot 2, Block 2, Hi-Tech Industrial Park 2nd Addition, Sedgwick County, Kansas. Generally located on the northwest corner of 37th Street North and Comotara Street.

DONNA GOLTRY, Planning Staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting a "Conditional Use" for 0.66 acre of property zoned "LI" Limited Industrial for expansion of a telephone switching facility. The application area is located on the north side of 37th Street North, about ¼ mile east of Rock Road and near the northwest corner of Comotara Street and 37th, and is developed with a telephone switching building. A "Conditional Use" was not required at the time the initial building was constructed in 1987. However, under the existing Unified Zoning Code an expansion of more than 30 percent of the original size of the building would require it to come into compliance with the current code, which would require a "Conditional Use." The proposed expansion would increase the building from approximately 5,000 square feet to 8,525 square feet, with a future addition of 1,104 square feet, for a total building size of 9,629 square feet.

The existing building is designed to blend with surrounding land uses. It has a pitched roof with a low profile and somewhat of a residential character. The applicant has proposed to maintain the façade on 37th Street North in its current appearance and blend the addition to the existing building. The addition will be located on the east, west and north sides of the building. It consists of wing-wall extensions on the east and west sides with a flat roofline and an extension of the pitched roof to the north.

The site is located immediately to the south of a large parcel that is occupied by the Thorn building. Industrial and office park uses are located to the south and east, except the tract immediately to the east is still vacant. The Inn at Willowbend is located approximately 1/3 mile north of the subject tract at the end of Comotara Street.

CASE HISTORY: The building is located in Hi-Tech Industrial Park 2nd Addition, platted March 13, 1986. A lot split created Tract A, the subject tract, on December 22, 1987. As part of the lot split access control was vacated to allow one point of access to Tract A. This is the only point of access onto 37th Street North.

ADJACENT ZONING AND LAND USE:

NORTH:	"LI" Limited Industrial	Thorn building, Inn at Willowbend
EAST:	"LI" Limited Industrial	Vacant, industrial/office park uses
SOUTH:	"LI" Limited Industrial	Industrial/office park uses
WEST:	"LI" Limited Industrial	Vacant

PUBLIC SERVICES: The site has access on 37th Street North, a four-lane arterial street. Traffic volume at Rock and 37th was rated at 5,310 ADT in 1997. The proposed expansion would generate very little traffic. Water and sewer services are available.

CONFORMANCE TO PLANS/POLICIES: The "Land Use Guide" of the Comprehensive Plan identifies this property as "industrial." The proposed utility use would not be anticipated to generate large amounts of noise, odor, or nuisances and is compatible in design with residential uses and surrounding large-scale office park/industrial uses.

RECOMMENDATION: The Wichita Land Use Guide recommends this area for industrial use, and major utility facilities are allowed as a "Conditional Use" in "LI" Limited Industrial. Based on these factors, the lack of externalities anticipated from the proposed use, and the information available prior to the public hearing, Staff recommends the application be APPROVED, subject to the following conditions:

1. The building expansion shall be developed with uniform exterior roof and wall materials and colors, and in general conformance with the site plan, attached hereto and made a part of this application.
2. Landscaping, including a landscape street yard and parking lot screening, shall be provided along 37th Street North in accordance with the Landscape Ordinance.
3. Screening shall be provided so that mechanical equipment and the emergency generator shall not be visible off-site.
4. Any violation of the conditions approved as a part of this request shall render the "Conditional Use" null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area and the adjacent land is zoned "LI" Limited Industrial. The character to the north, south and east is large industrial/office park uses. Farther to the north the character is that of a residential community with an inn, a country club facility and golf course.
1. The suitability of the subject property for the uses to which it has been restricted: The use of the property for a telephone switching facility is an appropriate "Conditional Use" for this "LI" Limited Industrial tract.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: No detrimental effects are anticipated because of maintaining the low profile, residential character of the existing telephone switching building throughout the expansion, and by screening of any mechanical equipment.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested "Conditional Use" is in conformance with the Wichita Land Use Guide.
5. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, generating little traffic, need for additional services, or externalities.

GOLTRY "This Conditional Use is to expand the Southwestern Bell switching facility that is located here (indicating). Here is the old Thorn building. You have industrial uses and you have Inn at Willow Bend. Because they are expanding more than 30%, they are required to come in and get a Conditional Use permit. The applicant is here and it is my understanding that they are in agreement with staff comments. I will stand for questions."

GAROFALO "Are there any questions? Okay, we will hear from the applicant."

RICK STUBBS "I am at 148 North Dellrose here in Wichita. Southwestern Bell has asked for the additional space to create a larger facility to accommodate the growing telephone needs for that northeast part of Wichita and to also include, for the broadband roll-out that we are putting in, to then to handle potential growth in northeast Wichita."

We have no plans for any type of towers or anything. We have actually been getting away with towers, so towers would not be any part of this facility use."

GAROFALO "The addition is to the north and on the west side?"

STUBBS "We are doing a 20-foot addition to the west. I believe a 54-foot addition to the north and a 14-foot addition to the east."

GAROFALO "Okay. Are there any other questions of the applicant? Thank you. Is there anyone else to speak in favor of this application? Is there anyone to speak in opposition? Seeing none, we will take it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The suitability of the subject property for the uses to which it has been restricted: The use of the property for a telephone switching facility is an appropriate "Conditional Use" for this "LI" Limited Industrial tract. Extent to which removal of the restrictions will detrimentally affect nearby property. No detrimental effects are anticipated because of maintaining the low profile, residential character of the existing telephone switching building throughout the expansion, and by screening of any mechanical equipment. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested "Conditional Use" is in conformance with the Wichita Land Use Guide. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, generating little traffic, need for additional services, or externalities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The building expansion shall be developed with uniform exterior roof and wall materials and colors, and in general conformance with the site plan, attached hereto and made a part of this application.
2. Landscaping, including a landscape street yard and parking lot screening, shall be provided along 37th Street North in accordance with the Landscape Ordinance.
3. Screening shall be provided so that mechanical equipment and the emergency generator shall not be visible off-site.
4. Any violation of the conditions approved as a part of this request shall render the "Conditional Use" null and void.

WHEELER moved, **JOHNSON** seconded the motion, and it carried unanimously (9-0).

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12. **DP-97** – C.C. Lawson, applicant; Don Folger, Jr., agent request an amendment to reduce setbacks and to expand an existing car wash located within 200 feet of a residential zoning district of Parcel 5 of DP-97 Westwood Hills CUP, described as:

Lot 4, Block 4, Westwood Hills Addition, Wichita, Sedgwick County, Kansas. Generally located West of Tyler and north of University.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting to amend DP-97 Westwood Hills CUP to reduce setbacks and to expand an existing car wash located within 200 feet of a residential zoning district. The application area is a 0.97 acre platted tract located west of Tyler and north of University. The site is currently zoned "LC" Limited Commercial.

The applicant is proposing an expansion of an existing six-bay car wash to an eight-bay car wash by adding an additional bay to both the north and south end of the existing car wash. The bay on the north would be automatic, without a dryer. The two additional bays would encroach into the existing 50-foot building setback; therefore, the applicant is requesting to reduce the building setback from the north and south property lines to 25 feet. The applicant's request complies with the compatibility setback requirements of the Unified Zoning Code.

Car washes within 200 feet of a residential zoning district are permitted in the "LC" district only as a Conditional Use. When the proposed location of a Conditional Use is within a CUP, review of the request is handled as an amendment to the CUP.

As depicted on the attached site plan, the car wash bays are located approximately 75 feet west of the east property line and 100 feet east of the west property line. The site plan also depicts four vacuums located east of the wash bays and 16 parking spaces west of the wash bays to be used for drying. The facility has one access to Tyler and one access University.

Property to the east of the site is zoned "LC" Limited Commercial and is developed with apartments. Property to the south is zoned "SF-6" Single Family Residential and is developed with a Sedgwick County Emergency Management building. Property to the west is zoned "LC" Limited Commercial and is undeveloped but has been recently platted by Mennonite Housing for single-family residences. Property to the north is zoned "LC" Limited Commercial and is developed with a day care facility.

Key Unified Zoning Code car wash "supplementary use requirements" include: buildings to be located at least 35 feet from arterials and 20 feet from other street right-of-way; 60 from the lot line of any residentially zoned lot, unless the property is being used for a nonresidential use permitted by-right in the underlying district; fencing, a minimum of six feet in height shall be provided along the interior side and rear property line, when adjacent to a dwelling; all area utilized for washing or drying, including ingress and egress, shall be paved; lighting shall comply with lighting standards in the code; no string-type lighting shall be permitted and signage as per the sign code. Landscaping also will be required per the "landscape ordinance". As depicted in the attached site plan, the project complies with these requirements; however, a fence would be required along the west property line if residences develop adjacent to the site in the future.

CASE HISTORY: Westwood Hills CUP was approved July 24, 1984, and amended April 25, 1995 to permit the existing car wash, which was permitted by an exception approved by the Board of Zoning Appeals. Westwood Hills Addition was platted October 4, 1984.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Day Care, General
SOUTH:	"SF-6"	Safety Services
EAST:	"LC"	Multi-Family
WEST:	"LC"	Undeveloped

PUBLIC SERVICES: The site has frontage to Tyler, a four-lane arterial with a left turn lane at Maple. Tyler has traffic volumes of 17,700 vehicles per day. The 2030 Transportation Plan estimates the volume for Meridian will increase to 25,600 vehicles per day. Municipal services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- F. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
- G. No dryers shall be associated with automatic wash bays.
- H. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
- I. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
- J. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The proposal is to expand a car wash currently existing in the neighborhood. Property to the north and east of the site is zoned for commercial development, with existing commercial and multi-family uses to the north and east, respectively. Undeveloped property to the west has been platted for single family development but is zoned for commercial development. Property to the south of the site is zoned for single-family residential uses and is developed with public/institutional uses.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial which accommodates retail, commercial, office, and complementary land uses, including car washes with a Conditional Use if located within 200 feet of a residential zoning district. This site is currently developed with a car wash.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing, and landscaping requirements. The existing car wash does not appear to have detrimentally impacted nearby properties.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials. This site has frontage to Tyler, a four-lane arterial with a left turn lane at Maple. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, fencing, and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas.
5. Impact of the proposed development on community facilities: Expansion of the existing car wash should have limited impact on community facilities.

KNEBEL "This is a car wash located within 200 feet of residential zoning. The site is currently developed with a car wash and they are requesting to expand the car wash by a total of two bays, one to the north and one to the south. In order to do so, they are required to amend the C.U.P. to reduce the setbacks, which are 50 feet, shown on these two lines here. They would like to reduce those to 25 feet. They are also required, since it is within 200 feet to go through the Conditional Use procedure, which, with a Community Unit Plan is an amendment to that C.U.P."

GAROFALO "Are there any questions of Scott? Is the applicant here? No wonder you have been sticking around."

DON FOLGER "I am the agent for the applicant. We are in agreement with everything in the staff comments. The only thing I would want to add is that the reason we are doing this, this is an unusual piece of ground and in the original C.U.P., they did very large setbacks. It was a pretty unmarketable piece of ground. We put the original car wash on to see if it was going to fly and now we are asking for the other two.

The other thing is that both of these might not be built at the same time. We might add one bay on and then another one at another time, but we wanted to make sure we could get both of them and maximize the site. Any questions?"

GAROFALO "The site plan here shows two new bays and a new equipment room?"

FOLGER "Yeah. The reason we have to have a new equipment room is because that one new bay is an automatic bay and this was not built with a big enough equipment room to handle the equipment to handle the equipment for an automatic bay."

GAROFALO "So the existing equipment room is in the middle there?"

FOLGER "Yeah, and it is also too far from the other automatic bay to make it work good."

GAROFALO "Are there any other questions? Okay, thank you. Is there anyone else here to speak in support of this application? Is there anyone to speak in opposition? Okay, I will take it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The proposal is to expand a car wash currently existing in the neighborhood. Property to the north and east of the site is zoned for commercial development, with existing commercial and multi-family uses to the north and east, respectively. Undeveloped property to the west has been platted for single family development but is zoned for commercial development. Property to the south of the site is zoned for single-family residential uses and is developed with public/institutional uses. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" Limited Commercial which accommodates retail, commercial, office, and complementary land uses, including car washes with a Conditional Use if located within 200 feet of a residential zoning district. This site is currently developed with a car wash. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing, and landscaping requirements. The existing car wash does not appear to have detrimentally impacted nearby properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials. This site has frontage to Tyler, a four-lane arterial with a left turn lane at Maple. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, fencing, and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas. Impact of the proposed development on community facilities: Expansion of the existing car wash should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. No dryers shall be associated with automatic wash bays.
3. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
4. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
5. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

WARREN moved, **HENTZEN** seconded the motion, and it carried unanimously (9-0).

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13. **Case No. Z-3350** - Barbara Nelson, applicant; Aspenwood Development, LLC c/o Dan Unruh, agent, request zone change from "SF-6" Single-Family Residential to "LC" Limited Commercial on property described as:

Lot 4, and the South Half of the vacated alley adjacent on the North, Block G, Westerlea Village Addition, Sedgwick County, Kansas. Generally located south of Maple and east of Ridge.

SCOTT KNEBEL, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "SF-6" Single Family Residential to "LC" Limited Commercial on a 0.5 acre platted tract located south of Maple and east of Ridge. The applicant proposes to rezone to allow for retail development. The site is currently developed with a one-story single family residence.

The surrounding area is characterized by a mixture of residential uses, commercial uses, and undeveloped property zoned for commercial uses. Property south and east of the site is zoned "SF-6" Single Family Residential and is developed with single family residences. Property to the west is zoned "LC" Limited Commercial and is developed with a Lowe's home improvement center. To the north is a Lee's dry cleaners which is a non-conforming use on property zoned "SF-6" Single Family Residential. Also to the north is undeveloped property zoned "LC" Limited Commercial.

The properties to the north have an extensive case history dating back to 1974. This case history involves two denied requests for a zone change to "LC" Limited Commercial before both properties were approved for the requested zone change. The undeveloped property was approved for "LC" zoning in 1992 subject platting and a restrictive covenant prohibiting various uses incompatible with residential development and requiring a six foot high masonry wall along the south property line and berming and landscaping along the east property line. The property upon which the dry cleaners is located was approved for "LC" zoning in 1997 subject to platting and a Protective Overlay limiting signage, lighting, and building height and requiring a six foot high masonry wall along the south property line. However, this zone change was not enacted and the case was closed due to failure by the applicant to plat the property.

To buffer proposed commercial development on the subject property from residences to the south and east, planning staff is recommending that a Protective Overlay be approved to continue the development controls established during the approval of the zoning changes on the adjacent properties to the north. This Protective Overlay would limit signage, lighting, noise, and building height; require a six foot high masonry wall along the south and east property lines; prohibit certain uses incompatible with residential development; and require dedication of street right-of-way and access control along Ridge and a utility easement.

CASE HISTORY: The site is in the Westerlea Village Addition, which was platted August 11, 1949. The site contains the south half of a vacated alley along the north property line, which was vacated March 1, 1994.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-6" & "LC"	Personal Care Service and undeveloped
SOUTH:	"SF-6"	Single Family
EAST:	"SF-6"	Single Family
WEST:	"LC"	Retail, General

PUBLIC SERVICES: The site has frontage to Ridge, a five-lane arterial with a raised median preventing left turns into and out of the subject property. Ridge has traffic volumes of 19,200 vehicles per day. The 2030 Transportation Plan estimates the volume for Ridge will increase to 22,700 vehicles per day. Municipal services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" uses; however, commercial zoning has been recently approved for the southeast corner of Maple and Ridge on properties located immediately north of this site. The commercial properties to the north along with this site

could develop as a "Convenience Center", which is defined by the Comprehensive Plan as a 2-4 acre site typically anchored by a mini-market with several other small-scale tenants that typically develop at arterial intersections. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions of a Protective Overlay:

- A. No off-site or portable signs shall be permitted on the property. No building advertising signs shall be permitted along the south or east face of any building.
- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential areas. Light poles shall be limited to a maximum height of 14 feet.
- C. Outdoor speakers and sound amplification systems shall not be permitted.
- D. No buildings shall exceed one story in height with a maximum building height of 25 feet.
- E. A 6-foot high masonry wall shall be constructed along the south and east property lines where a residential zoning district abuts the site.
- F. The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; group home; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment; and vehicle repair.
- G. By separate instrument, the applicant shall dedicate additional right-of-way for Ridge Road per pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations, access control except for one opening along the entire frontage of Ridge Road, and two additional feet (for a total of 10 feet) of utility easement along the east property line.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mixture of residential uses, commercial uses, and undeveloped property zoned for commercial uses. The zoning and land uses are residential to the south and east and commercial to the north and west. All other properties located within the same distance as the subject property from the intersection of Maple and Ridge are zoned for and/or developed with commercial uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single Family Residential which accommodates moderate-density, single family residential development and complementary land uses. The site is currently developed with a single family residence; however, increasing commercial development at the intersection of Maple and Ridge could make this site less desirable for residential use in the future, especially since the lot has frontage to Ridge, a five lane arterial.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the conditions of a Protective Overlay which would limit signage, lighting, noise, and building height; require a six foot high masonry wall along the south and east property lines; require landscaping per the "landscape ordinance", and prohibit certain uses incompatible with residential development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" uses; however, commercial zoning has been recently approved for the southeast corner of Maple and Ridge on properties located immediately north of this site. The commercial properties to the north along with this site could develop as a "Convenience Center", which is defined by the Comprehensive Plan as a 2-4 acre site typically anchored by a mini-market with several other small-scale tenants that typically develop at arterial intersections. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
5. Impact of the proposed development on community facilities: Detrimental impacts on traffic should be minimized by the conditions of a Protective Overlay which would require dedication of street right-of-way and access control along Ridge. Other community facilities should not be adversely impacted.

KNEBEL "The site to the north of this property has a pretty long history. As you can see, this is Limited Commercial and that took several times through the Planning Commission and City Council to get it approved. This site was recently approved to Limited Commercial but it was not platted, which is one of the conditions, so the zone change did not stick. Both of the properties to the north had several conditions on their uses, and we are recommending those same conditions be applied to this property if it is to be approved."

GAROFALO "Are there any questions of Scott? Is the applicant here?"

DAN UNRUH "Good evening. I am a managing member of Aspenwood Development, LLC. I am the agent on behalf of the property owner, Barbara Nelson. We are fundamentally in agreement with staff comments, subject to our request to allow drive-through restaurants. We have spoken with as many neighbors as we could in the immediate area and we have identified a pretty strong demand for lunch trade in the area based upon the comments of some of the retailers and property owners."

We have a strong sense that the property is going to be developed pretty much at the same time that the properties on the north of us, which is to the east of Lee's cleaners. So as a result of that, we intend to develop a nice looking retail frontage there and we don't really have a prediction for the future as to what the exact use of the property will be, but we don't want to be hamstrung with the lack of a drive-through restaurant at that site. Other than that, we have no objections to staff comments, and I will open up for questions."

OSBORNE-HOWES "So what have you been talking with the neighbors about? Have you been talking with them about a drive-through restaurant?"

UNRUH "Not specifically a drive-through restaurant. We did talk to them about the changing nature of the area. The fact that the corner is becoming more and more in demand for commercial purposes and less and less viable as a residential use. My client has been living there for 35 years and she is no longer interested in living there because of the changing nature of the neighborhood."

OSBORNE-HOWES "So as far as you know, the neighbors could have picked this up and saw that staff said 'no drive-through restaurant' and you didn't specifically talk to them about one?"

UNRUH "You are absolutely correct."

OSBORNE-HOWES "Uh-huh."

HENTZEN "Just east of Lee's Cleaners, that is vacant, isn't it?"

UNRUH "It is a vacant parcel of land, yes. And we have had discussions with those property owners and we understand that their intent is to develop that property for commercial purposes as well. We have discussed with them about making sure that we try to develop, more or less in concert with one another to create a nice, uniform look, something that would be real attractive and complimentary to the existing retail in the area."

WARREN "You are in agreement with all of these restrictive conditions except the drive-in, or drive-through restaurant?"

UNRUH "We don't have a problem with prohibiting drive-in restaurants, but the drive-through restaurant, we didn't want to hinder ourselves and wanted that flexibility. That is something that is quite common with sit-down restaurants is to have drive-through capability in addition. Ms. Osborne-Howes, in response to your question also, we have received pretty strong support from the neighboring property owners for just in general, light commercial uses, and I suppose that we should have asked that specifically after we got the staff report. We got it on Monday and we just didn't have time to follow up with them on that specific issue."

GAROFALO "You have talked directly to the residents that are immediately to the south and east of you?"

UNRUH "That is correct."

GAROFALO "And it is all residential, clear down to the south and to the east?"

UNRUH "It is residential down south. (Indicating) this is one residential property on two lots. There is a home there, a home there and a home there."

HENTZEN "Isn't that big red spot there Lowe's?"

UNRUH "Yes, this is Lowe's. This is the Outback Steakhouse here."

HENTZEN "Well, we have three corners already 'LC', or something like that. Now we are talking about the fourth corner."

UNRUH "Correct."

GAROFALO "Are there any other questions? Okay, thank you. Is there anyone else to speak in favor of this application? Anyone to speak in opposition. Seeing none, we will take it back to the Commission."

OSBORNE-HOWES "Well, I would make a motion to approve, subject to staff comments, or I would support a deferral for two weeks so that the applicant could come back and I could have some knowledge that those people who live right adjacent to it would support his plans. I am not necessarily opposed, but these are packed in pretty close. Those are the two choices as I see it. I know it is right across from Lowe's, but these homes are pretty packed around this."

HENTZEN "This was scheduled to be heard today for an answer yes or no."

MOTION: Having considered the factors as contained in policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood): The surrounding area is characterized by a mixture of residential uses, commercial uses, and undeveloped property zoned for commercial uses. The zoning and land uses are residential to the south and east and commercial to the north and west. All

other properties located within the same distance as the subject property from the intersection of Maple and Ridge are zoned for and/or developed with commercial uses. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single Family Residential which accommodates moderate-density, single family residential development and complementary land uses. The site is currently developed with a single family residence; however, increasing commercial development at the intersection of Maple and Ridge could make this site less desirable for residential use in the future, especially since the lot has frontage to Ridge, a five lane arterial. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the conditions of a Protective Overlay which would limit signage, lighting, noise, and building height; require a six foot high masonry wall along the south and east property lines; require landscaping per the "landscape ordinance", and prohibit certain uses incompatible with residential development. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Low Density Residential" uses; however, commercial zoning has been recently approved for the southeast corner of Maple and Ridge on properties located immediately north of this site. The commercial properties to the north along with this site could develop as a "Convenience Center", which is defined by the Comprehensive Plan as a 2-4 acre site typically anchored by a mini-market with several other small-scale tenants that typically develop at arterial intersections. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Impact of the proposed development on community facilities: Detrimental impacts on traffic should be minimized by the conditions of a Protective Overlay which would require dedication of street right-of-way and access control along Ridge. Other community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to the following conditions of a Protective Overlay:

1. No off-site or portable signs shall be permitted on the property. No building advertising signs shall be permitted along the south or east face of any building.
2. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from nearby residential areas. Light poles shall be limited to a maximum height of 14 feet.
3. Outdoor speakers and sound amplification systems shall not be permitted.
4. No buildings shall exceed one story in height with a maximum building height of 25 feet.
5. A 6-foot high masonry wall shall be constructed along the south and east property lines where a residential zoning district abuts the site.
6. The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; group home; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment; and vehicle repair.
7. By separate instrument, the applicant shall dedicate additional right-of-way for Ridge Road per pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations, access control except for one opening along the entire frontage of Ridge Road, and two additional feet (for a total of 10 feet) of utility easement along the east property line.

OSBORNE-HOWES moved, **HENTZEN** seconded the motion.

WARREN "I am concerned. I don't think we are going to be against a restaurant having a little side drive-in window. I just don't think that is anything that is going to be offensive. I would hope that you would at least allow him to have a restaurant with a side window."

OSBORNE-HOWES "But they have a speaker."

UNRUH "If I could speak to that. There is also a staff recommendation not to have outdoor speakers. They are a little difficult to operate with that. They can be done, but most aren't."

MARNELL "I was just going to ask where they came up with putting the restrictions on this, given the type of site that is."

KNEBEL "These restrictions are based on the restrictions that were approved for the sites to the north. As I mentioned, they have a long history. In fact, both of the sites to the north have been denied twice for Limited Commercial zoning before receiving approval. And when they were, they received approval subject to a similar set of conditions as was placed on this particular parcel here."

(Indicating) This is vacant property that is zoned commercial, and this is Lee's Cleaners."

BARFIELD "Okay, so we have the Outback Steakhouse, and what is directly opposite the Outback?"

KNEBEL "This is an 'L' shaped strip center?"

WHEELER "Did we allow drive-through restaurants on the other parcels there to the north?"

KNEBEL "Not that I recall. I can look in the file. Actually, I put that file away. I am pretty sure that I based that on the restrictions that were approved. I gave it a little different wording. The wording on the one approved in the past really didn't represent defined terms as given in the Zoning Code, and I tried to use only defined terms."

WARREN "How much frontage is there on Ridge?"

KNEBEL (to agent in audience) "Do you remember the size of the site?"

UNRUH (From the audience) "Excuse me, would it be of any value if we were to position the drive-through window at the north end of the property line? I don't know if that is something that would help us. It is 139 feet."

OSBORNE-HOWES "I know you are in a hurry on this, but I know that neighborhood to the east has really fought long and hard, and have been so controversial at this corner all of the time, to maintain their residential flavor. It is not a question where we are looking that commercial is going to overtake that whole area. These people have really fought long and hard."

I think it is real important that they have a speaker for a drive-through. I don't have a problem with saying let's have a deferral and have him come back in two weeks and hear from the neighbors that are close by. But without that, if we want to vote today, I don't know."

HENTZEN "Scott, does that new Outback up there have a drive-through or a pick-up window?"

KNEBEL "I didn't look specifically, but I have never seen one that does."

HENTZEN "Well, there is some restaurant out there where they do have that."

KNEBEL "There is a Dog and Shake drive-through here."

JOHNSON "I think there is a pick-up window on the south side of Outback."

KNEBEL "Of the Outback? Okay. I didn't see that specifically."

PLATT "This is a real tough one because the presence of Lowe's is dominating the whole area, of course. As a result, we are going to see, I would assume, the whole block along Ridge going to Neighborhood Retail or to Office. I think our very important obligation then is to use that as a buffer to then protect the residential areas to the east, which are there. I think that is why I would think it is very important not to allow cars circulating around in this little tiny lot all night long. I think we need to focus on things that will work off of Ridge Road."

I think our obligation is to protect the neighborhood to the east, and I don't think we can do that with any kind of drive-in or drive-through establishment."

GAROFALO "Is there any other discussion? We have a motion to approve, subject to conditions."

VOTE ON THE MOTION: The motion carried with 9 votes in favor. There was no opposition.

14a. **Case No. SCZ-0799** – Eugene A. Stockemer (owner), Willis J. Carlin and Regina R. Carlin, Gerelyn A. Carlin (contract purchasers); and

14b. **Case No. CU-559** – Eugene A. Stockemer (owner), Willis J. Carlin and Regina R. Carlin, Gerelyn A. Carlin (Contract purchasers) request a Conditional Use to allow vehicle sales, outdoor.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting that a 1.1 acre tract of property zoned "RR" Rural Residential be rezoned "LC" Limited Commercial and that a "Conditional Use" for vehicle sales, outdoor, be approved for the site. The application area is located in the community of St. Mark, along the south side of 29th Street North between 183rd Street West and 199th Street West.

The property is unique in that it is occupied by an old commercial structure that has been used as a public garage to serve the St. Mark community since the 1930s. The western portion of the structure is a residence. The lot has been used for vehicle sales during the past few years, although it was not zoned to allow this use.

The surrounding property is zoned "RR" Rural Residential. It is developed as a small rural community, with houses clustered along 29th Street North and to the south. A public elementary school is across a driveway to the east from the application area and St. Mark Church is located to the west.

One of the unique characteristics of the community is the relatively narrow right-of-way of 30 feet from centerline rather than the standard 50 feet from centerline for rural arterial roads. Setbacks are small, with the buildings being located close to the pavement. However, there have been two cases in proximity to the application area where a 50-foot right-of-way from centerline was followed. The first was a requested variance for a reduction in setback to 45 feet (County Board of Zoning Appeals 11-90). The request was granted for a reduction to 50 feet instead of 45 feet in order to allow for future expansion of the road. The second case was the dedication of 50 feet of half-width right-of-way along 29th Street North by Clasen Addition. Because the prevailing setbacks along 29th in St. Mark's are narrow, it is unlikely that 29th will be widened until a significant amount of urban expansion occurs in the vicinity. Therefore, staff would request that the applicant make a contingent dedication of 20 feet in the event the widening is undertaken in the future.

The existing building is large in comparison to typical small car lots. Generally the amount of parking required for customers and employees would be a smaller ratio than that based on a 2,800 square-foot building. A reduction of parking requirements by 25 percent could be requested by administrative adjustment and would reduce the number of customer/employee spaces from eight to six. Any further reduction would require County BZA approval. The applicant has indicated that the number of customer spaces needed would not be anticipated to exceed two or three at a time. The normal range of cars on the lot would be between two to eleven cars for sale, and they would be parked along the northeast corner of the site. Since the site plan provides for display of up to 20 cars, plus seven customer spaces, the applicant has not felt the need to request a reduction in required parking.

However, the location of the customer parking spaces is viewed as an issue on the current site plan. The parking spaces are located directly off 29th Street North. As long as the right-of-way remains at 30 feet in half-width, there is room for the cars to back around before reentering 29th. If the additional 20 feet for right-of-way were needed, there would not be sufficient area for turning around and the customer parking would need to be located, most likely along the eastern side of the building.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Rural Residential	Residences, farm
EAST: "RR" Rural Residential	Elementary school
SOUTH: "RR" Rural Residential	Residences
WEST: "RR" Rural Residential	Residences

PUBLIC SERVICES: The site has access to 29th Street North, a two-lane rural arterial road, with relatively low volume of traffic. Traffic counts are 800 ADTS for the eastern leg of 29th and 500 ADTs for the western leg, with traffic peaks during church or school dismissal. The property is beyond the urban service boundary for sanitary sewer and relies on private sewage disposal. Rural water is available, but is not being used by the site.

CONFORMANCE TO PLANS/POLICIES: The "Sedgwick County Development Guide" of the Comprehensive Plan identifies this property as "agricultural," but identifies St. Mark as a rural community with undefined boundaries. It does not qualify as a "Small City" since it is unincorporated. According to the "Sedgwick County Development Guide, basic convenience and service-oriented commercial activity to serve rural residents and highway users would be permitted at appropriate locations.

RECOMMENDATION: The historic use of the property for commercial purposes blends with the nature of small rural communities serving basic convenience and service-oriented activities. However, the transition to vehicle sales, outdoor, typically is a use with a more urban flavor, and would be located in the CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities can support such uses. In order to reconcile the two conflicting locational guidelines, the character of the use should remain small and blend in with its surrounding area. Based on these conditions and the information available prior to the public hearing, Staff recommends the application be APPROVED, subject to platting within one year and contingent dedication of 20 feet for right-of-way along 29th Street North, and subject to the following conditions:

5. The application area shall be developed in substantial conformance with the site plan attached hereto and made a part of this application. The required customer and employee parking shall not be used for any display of vehicles. In the event the contingent dedication is required, the site plan would need to be amended to relocate the customer parking.
6. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
7. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any

automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be done on the premises without first obtaining "GC" General Commercial zoning.

8. Only one freestanding sign shall be permitted, not to exceed the size of 36 square feet and not to exceed ten feet in height. No portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be used.
9. No sound projecting devices or loudspeakers shall be used on-site.
10. There shall be no use of elevated platforms for the display of vehicles.
11. Any parking lot light poles shall have cut-off fixtures which direct light away from nearby residential areas. Light poles must be limited to a maximum height of 14 feet.
12. A landscape street yard consisting of three shade trees of 2" caliper each, or equivalent, shall be provided along 29th Street North. A buffer of one tree for every 40 feet shall be provided south of the display area between the proposed use and the school located to the east and along the south property line.
13. Hours of operation shall be limited to 8 am to 8 p.m.
14. Any violation of the conditions of approval shall render the Conditional Use permit null and void.

This recommendation is based on the following findings:

4. The zoning, uses and character of the neighborhood: The zoning of the surrounding area is "RR" Rural Residential. The character of the rural community is that of a scattering of houses, an elementary school and a church.
5. The suitability of the subject property for the uses to which it has been restricted: The property has been used as a public garage for many years; more recently as vehicle sales, outdoors. However, the proposed "Conditional Use" expands the extent of the non-conformity from a few cars displayed to up to 20 cars.
6. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" could generate demand for similar requests in the area. Additional car lots in such a small community would not be in character with its rural flavor and would be expected to detrimentally affect nearby properties by pressure for commercial use more in character to urban areas.
7. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is in conformance with the "Sedgwick County Development Guide," so long as the scale of the operation remains small and of a rural community-serving character.
5. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, and would be less than operation of a public garage due to potential sewage disposal requirements of that type of use.

DONNA GOLTRY "We have asked that the property be platted as one of the conditions, which is a standard condition for issuance of a building permit in the County. Normally there would have been a dedication of 50 feet from the centerline. It is only 30 feet and we are asking for a contingent dedication for the additional 20 feet, which will take it back to about the back bumper of the car shown on the slide. That is because you will notice that St. Mark's is unique and part of the character or the community is that the houses are set quite close to this old rural road. So we feel that it is probably unlikely that there will be a need to widen the street to take that 50-foot right-of-way because it would wipe out some of the residences. On the other hand, it is our duty as a public agency to ensure that were that possibility to occur, we have provided for it through contingent dedication.

We have included a number of conditions in the recommendations, most of which are standard with car lots. I do know that the applicant is not quite in agreement with all of the conditions. The applicant is here and I will stand for questions."

WARREN "This has obviously been a legal non-conforming?"

GOLTRY "Not actually. The thing is that it was a non-conforming public garage. Public garage is an old term in an ordinance for car repair."

WARREN "But you have had car lot sales there for years."

GOLTRY "I don't know how long. The car lot sales started in the 1990s, didn't they?"

WILLIS CARLIN (From the audience) It was signed off as legal non-conforming three years ago by a County Zoning Inspector."

WARREN "Right. So what motivates you to be here now?"

CARLIN "We are changing the dealership. We own and live on this property."

GOLTRY "You should come up here to speak."

WILLIS CARLIN "Hi. We bought this property, it was built in 1937, from Gene Stockemer. We have lived there nine years and are in our last year of paying for it. The property has always been commercial, and it has always been assessed at commercial value. Three years we went in with Winnegar Motors to help him sell cars. We went down to a County Zoning Inspector to have it signed off on, and we have that documentation. When we went back to get it, we wanted to set up our own dealership under our own name. My wife stays home with our kids, so she was going to run that for us rather than with Winnegar Motors.

When we did that they said that the person that signed off on it three years ago should not have done that, and we needed to do a Limited Use Commercial. This has been a couple of months process for us, and we are learning a lot, may I add. That was one of my points is that we haven't been operating illegally, and I wouldn't want anybody to think that. It was signed off on.

The problem I have is the additional 20-foot contingency, and the platting requirement. We are not adding on, we are not changing anything, we are just staying exactly the same as we are today, changing a sign. The parking space requirement, we have, at most, one to two cars there at a time. We don't have seven customers in St. Mark's Kansas. I don't have a problem with having seven spaces, but I don't see a problem when they back out away from this property. This is a planter with flowers in it. When they back away from this, they stay on our property and yield with 29th Street. It isn't a matter of them backing out on 29th Street, they yield with 29th Street. So that was one concern of mine. This requirement, I don't see as it needing to be platted or the 20-foot requirement.

Until I spoke with Donna, I did have a little bit of a problem. I didn't understand the barrier. Then she explained the barrier being these cement, concrete barriers, so I don't have a problem with that. We have talked to all of the neighbors, and they don't understand why we have to go through this. They are very open. We have changed this property, and since we have lived there, we have taken out 20 trees out of the back yard. We have improved it, painted it, put a roof on it. Like I said, we live there and we are not going to make this an eyesore. I have to put up with it.

Is there anything else, Regina, that I am missing? This is my wife, Regina."

REGINA CARLIN "We live at this location, like he said. I guess my husband and I just wanted to point out that of course we were not operating illegally. If you want to see the paperwork, we have those copies that it was signed off on on zoning, and just with us trying to make this a business of our very own instead of working with a partner. That is where we ran into the problems of wanting to go through the whole steps of getting it rezoned correctly. That is where we came in on Donna as far as that goes."

WILLIS CARLIN "The other area of concern is that this area (indicating), when they wrote it up, they wrote it up as having to have asphalt everywhere. We currently use this, as the pictures show, this is a gravel and grass area. We have no problem with that staying as gravel and grass area. We would like to keep it with the small town community. We don't want to have concrete and asphalt everywhere. We want to leave the grass. If it is muddy and stuff, we keep the cars on the asphalt."

WARREN "Is this plan that we are looking at one that you designed, developed and brought in, or is this one of the Planning Department's?"

WILLIS CARLIN "P.E.C. helped us with this. We had to have something made up."

REGINA CARLIN "This is the way it sits right now. This is how we have it."

WILLIS CARLIN "But we never have that many cars."

REGINA CARLIN "Exactly. And they have it for employee parking. I live there and I am the only employee."

WILLIS CARLIN "We park in the garage."

GAROFALO "I have a question. The only driveway I see on this is over on this side here."

WILLIS CARLIN "This is all asphalt right onto 29th Street. And then there is a driveway here (indicating) and here. This here we don't use. This is our back yard. This here driveway we use for driving the cars off for when people are test driving, but this is a full-length driveway and underneath here is a wooden culvert. It isn't a cement culvert that goes through there."

GAROFALO "So people can drive right off of 29th Street right into your stalls."

REGINA CARLIN "That is correct."

GAROFALO "The way I looked at this thing, it looked like they had to go crashing through cars to get to the customer parking. All right. Are there any other questions?"

JOHNSON "Do you know how many parking places are required for this facility?"

GOLTRY (From audience) "Technically they were supposed to have eight. We counted the one inside the garage. That seems a little bit excessive, and I pointed that out in the staff report. It is because it is predicated on the size of their building and the building is quite large for the few amount of cars they are planning to sell.

It is a case where if they really had a problem with it, they could probably go to the Board of Zoning Appeals to get it reviewed. But they don't see the need to follow-up that way."

JOHNSON "Well, it has been in this conditions forever and the whole Main Street of St. Mark's is done the same way. The church is the same way."

WILLIS CARLIN "Now, the church, they actually do back off on 29th Street."

REGINA CARLIN "I do have pictures of how their parking is closer to the road than ours."

JOHNSON "I am afraid you will confuse everybody at St. Mark's if you change that."

REGINA CARLIN "I'm afraid so."

WARREN "There are basically ten conditions here that have been set up as conditions for the recommendations of approval. I didn't notice that additional easement or right-of-way being in those recommendations."

WILLIS CARLIN "It is under the recommendation of the last sentence; 'staff recommends approval subject to platting within one year and continued dedication of a 20-foot right-of-way'."

WARREN "Okay. I missed that."

WILLIS CARLIN "Yeah. And I would like to have that taken off of there; the 20-foot right-of-way and the platting. I am not changing anything. If I was building, I could understand it.

And then, in No. 2, take off the requirement of having to have concrete and asphalt. Add gravel and grass if you would, please. All of the rest of it, I am okay with."

WARREN "Pave with gravel and grass."

REGINA CARLIN "We already have pavement currently all along the north side of the whole building."

WARREN "Okay, so it is that first item of the 20 foot and the platting and Item No. 2. How are the other 10 items?"

WILLIS CARLIN "I am okay with them. It was asked about the days of operation. We live there so we do take people coming out there. They will call on a Saturday afternoon and ask if they can come out. That is the way it is run today."

GAROFALO "So you are available seven days a week?"

WILLIS CARLIN "Unless we are gone."

REGINA CARLIN "We are there, but a lot of times we don't answer the phone on Sundays, because we don't want people coming out. They may come out to look at the cars, but..."

GAROFALO "So would you be opposed to limiting it?"

WILLIS CARLIN "I would rather leave it as it stands, if we could because then if somebody comes out on Sunday, and sometimes that is the only time that works for people. Are there any other questions."

MARNELL "I have a question of staff. This just seems like a lot of bureaucracy for something that everybody agrees is just working fine. Can we just simply do a Conditional Use to allow them to continue to operate exactly like they are?"

KROUT "I think that would end up being too restrictive. And I don't have a problem with making the changes that they are asking for. I will tell you that we have asked for dedication along 29th Street with other plats and things that have come in before because it would be a shame if 20 years from now, St. Mark's is different than it is today, but when you build a sewer treatment plant, and we are going to build a water tower out there at 183rd and 45th Street and someday, things are going to change. So we had an obligation to show you what it is that we have required before and if you want to waive that, that is okay and some day, as in some communities, they have special plans for villages and small towns and they say that 29th Street isn't going to be an arterial street in the future plans.

I just want to tell you that you are kind of closing off options for the future when you don't require that dedication."

BARFIELD "Are you doing repairs at this location now?"

WILLIS CARLIN "No, we do not, other than I may fix a light bulb and things like that, but the shop does have two hydraulic lifts in it and an oil pit, but I don't use it."

KROUT "But you are granting 'LC' zoning and that is going to allow auto repair and many other uses in an 'LC' district."

WILLIS CARLIN "But you can grandfather in at the automotive repair, I was told."

KROUT "That is right. You can grandfather that in, and you can also grandfather changes in similar uses."

BARFIELD "Do you offer warranties on these vehicles?"

WILLIS CARLIN "Oh, yeah."

BARFIELD "Who does the repair?"

WILLIS CARLIN "We have them take it to a mechanic of their own and then we pay for it."

REGINA CARLIN "Currently when a car is bought and something is wrong with it, Winnegar Motors, with their main lot four miles west of us on Andale Road and they do some. No cars are ever brought to our shop, or our location for repairs."

BARFIELD "As I understand it, that is because of a working agreement that you have with Winnegars. Is that correct? What you are going to be doing is selling on your own, as I understand it."

WILLIS CARLIN "Our intent is...minor repairs we may do, not body work. But under normal circumstances I don't have time for that, I have a full-time job. So we will have them take it to a mechanic of their choice and pay for it."

BARFIELD "That may be the case now, but I think that as you get deeper into this, you will find out that it is much more economical for you to provide that service."

OSBORNE-HOWES "This is a company that is just wanting to change a sign, am I right? And that is what got you into this? Okay. So I can understand the point. On the other hand, look at the address and look at St. Mark's. Realistically, 20 years from now it is not going to be anything like it is now. We all know that. We all know that it is going to almost be part of Wichita. Twenty years from now, you may sell this to someone else and in the middle of a thriving community you will have car lot with grass and asphalt and a lot of things that look good now, but 20 years from now may be hurting the value of the commercial area of St. Mark's.

I am not saying that I want to support everything that staff is talking about, but I am a little concerned about just saying let's just let them have the sign and forget it. Does anyone have some suggestions?"

WILLIS CARLIN "We are supported by the community."

HENTZEN "Mr. Chair, St. Mark's hasn't changed in forty years. I live out there not too far from St. Mark's. Saying that in 20 years from now it is going to be a metropolis is shallow. But all this couple wanted to do was to continue what they were doing, and we are finding all kinds of problems and saying we had better make it Commercial or Light Commercial because the inspectors of this County question what the predecessors of the county had done before.

Now, I am not worried about, if you have to have 'LC' and the County has been here, then let's give it to them. If we can't do that, let's leave them alone."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The zoning of the surrounding area is "RR" Rural Residential. The character of the rural community is that of a scattering of houses, an elementary school and a church. The suitability of the subject property for the uses to which it has been restricted: The property has been used as a public garage for many years; more recently as vehicle sales, outdoors. However, the proposed "Conditional Use" expands the extent of the non-conformity from a few cars displayed to up to 20 cars. Extent to which removal of the restrictions will detrimentally affect nearby property: The "Conditional Use" could generate demand for similar requests in the area. Additional car lots in such a small community would not be in character with its rural flavor and would be expected to detrimentally affect nearby properties by pressure for commercial use more in character to urban areas. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The requested change in zoning classification is in conformance with the "Sedgwick County Development Guide," so long as the scale of the operation remains small and of a rural community-serving character. Impact of the proposed development on community facilities: The projected impact on community facilities is minimal, and would be less than operation of a public garage due to potential sewage disposal requirements of that type of use.) I move that we recommend to the governing body that the request for be approved, subject to the following:

1. The application area shall be developed in substantial conformance with the site plan attached hereto and made a part of this application. The required customer and employee parking shall not be used for any display of vehicles.

2. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
3. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be done on the premises without first obtaining "GC" General Commercial zoning.
4. Only one freestanding sign shall be permitted, not to exceed the size of 36 square feet and not to exceed ten feet in height. No portable, flashing, moving or off-site signs shall be permitted and no streamers, banners, pennants, pinwheels, commercial flags, bunting or similar devices shall be used.
5. No sound projecting devices or loudspeakers shall be used on-site.
6. There shall be no use of elevated platforms for the display of vehicles.
7. Any parking lot light poles shall have cut-off fixtures which direct light away from nearby residential areas. Light poles must be limited to a maximum height of 14 feet.
8. A landscape street yard consisting of three shade trees of 2" caliper each, or equivalent, shall be provided along 29th Street North. A buffer of one tree for every 40 feet shall be provided south of the display area between the proposed use and the school located to the east and along the south property line.
9. Hours of operation shall be limited to 8 am to 8 p.m.
10. Any violation of the conditions of approval shall render the Conditional Use permit null and void.

WARREN moved, **MARNELL** seconded the motion.

WARREN "In the future, if St. Mark's becomes what you think, and it may be, then there will be new regulations and new requirements that could be applied at that time for surfacing and for signage and all of these other things.

I personally really think that if this thing went to court we wouldn't have a leg to stand on because I think it is already a legal non-conforming in which they would say if the guy wants the sign, give it to him. I don't think there would be a court in the land that wouldn't give it to him."

PLATT "I have a question for staff. Can we legally waive platting?"

KROUT "Yes."

GAROFALO "Are there any other questions or discussion? If not, we will vote."

VOTE ON THE MOTION: The motion carried with 8 votes in favor (Warren, Johnson, Wheeler, Marnell, Platt, Garofalo, Barfield and Hentzen) and 1 in opposition (Osborne-Howes). Warner, McKay, Carraher, Michaelis and Lopez were not present.

BARFIELD "And let the records show that Commissioner Hentzen got the chance to support the staff."

MOTION: That the Metropolitan Area Planning Commission adjourn.

MARNELL moved, **GAROFALO** seconded the motion, and it carried unanimously (9-0).

The meeting was formally adjourned at 6:30 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2000.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)